Supreme Court, U. S.
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MICHAEL RODAK, JR., CLERK

IN THE

# SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1974

No. 75-263

BOARD OF EDUCATION OF ARMSTRONG HIGH SCHOOL DISTRICT NO. 225, VERMILION AND CHAMPAIGN COUNTIES, ILLINOIS, ET AL.,

Appellants,

v.

JAMES H. ELLIS, SUPERINTENDENT OF EDUCATIONAL SERVICE REGION, VERMILION COUNTY, ILLINOIS, ET AL.,

Appellees.

On Appeal From the Supreme Court of the State of Illinois

## STATEMENT AS TO JURISDICTION

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Footnote: The prefix "a" has been used to distinguish the pages in the Appendices to the Jurisdictional Statement from those of the documents actually appended.



IN THE

# SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1974

No.

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**BOARD OF EDUCATION OF ARMSTRONG HIGH SCHOOL DISTRICT NO. 225, VERMILION AND CHAMPAIGN COUNTIES, ILLINOIS, ET AL.,**

**Appellants,**

**v.**

**JAMES H. ELLIS, SUPERINTENDENT OF EDUCATIONAL SERVICE REGION, VERMILION COUNTY, ILLINOIS, ET AL.,**

**Appellees.**

---

**On Appeal From the Supreme Court of the State of Illinois**

## STATEMENT AS TO JURISDICTION

Appellants, Board of Education of Armstrong High School District No. 225, Counties of Vermilion and Champaign and State of Illinois; and Marvin E. Poyner, Bernice M. Poyner, Ruth David, Palmer Tarter, Mrs. Mary Ann Vinson, Mrs. Sarah E. Cook, Mrs. Daisy Selsor, Marjori Ashcraft, Goldie Acton, H. L. Wise, Rosella J. Wise, Virlon Juvinall, Robert W. Davis, Olive M. Davis, Hazle E. Davis, Norma E. Landers, James Landers, Kathy

Davis, Elizabeth Hayn, Grace C. Abbott, Ronald E. McElhoe, Mrs. Alice Powell, Olga B. Juvinall, Edwin C. King, Helen King, Abbie W. Acton, Buford Acton, Flossie Acton, Paula Davis, John R. Davis, Bernice Davis, Andy Hayn, Elfie Tarter, Howard Abbott, Russell Barker, Mrs. Betty F. Barker, Mrs. Peggy J. Connor, Fred W. Connor, Sr., Robert Chesnut, Lois Chesnut, Elsie Chesnut, Mark Chesnut, Lois West, Donna Good, Dorothy E. Mattis, W. R. Schmit, Sharon Schmit, Leo G. Bloomfield, Rita Curry, Judith A. Divan, A. Lomax, Given Lomax, Patricia J. Shank, Laura M. Lomax, John D. Lomax, Shirley M. Lomax, Eileen Fox, Carole J. Albert, John D. Albert, Rose Curry, Davey Curry, Peggy J. Graves, Deloris L. Ellis, Brenda Anderson, Paula Pricer, Robert Pricer, Barbara J. Lomance, Walter D. Lee, Cora Divan, Floyd Nelson, Beverly Nelson, Glen Fletcher, Wilma Mayhew, Ernest L. Mayhew, Mrs. Billie Beninati, Frank Stingley, Jr., Helen Stingley, Johnnie King, Betty King, Ruth King, Charles Acton, Charlotte Acton, Jack Ludwig, Wilma Ludwig, Thomas E. King, Betty Tucker, Earl Tucker, Randee Clingan, Ethel Davis, Donald Davis, Ron Knight, Russell E. Roberts, Norma Knight, Paul Knight, Dale Miles, Alice Miles, Ruth Kinney, Lawrence Goodhue, Carolyn Goodhue, Harold Long, D. Ralph Kinney, Carole S. Smith, Judy Laflen, Lucille M. Laflen, Vera Wise, Albert Wise, Bernice Lee, John Beninati, Mary Calvert, Sharon L. Curry, Carol Carnahan, Abbie Hazelbaker, Barbara Long, Jo Ann Goodner, Mary J. Bloomfield, Jim Bloomfield, Mrs. Jane Bloyd, Mrs. Floyd J. Turner, Floyd J. Turner, Mrs. Julia Dodson, Bart Snyder, Helen Snyder, Marilyn Parrish, Raymond Parrish, Betty Coffing, Hugh Coakley, Ronald W. Camp, Virginia A. Camp, James S. Clingan, Diane M. Acton, James C. Greer, Eileen E. Greer, Diana K. Parrish, Rodney D. Parrish, Cecile I. Ludwig, Greta R. Ludwig,



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## OPINIONS BELOW

The opinion of the Supreme Court of the State of Illinois is reported officially in 60 Ill. 2d 413 and unofficially in 328 N.E. 2d 294. A copy of the opinion delivered by the Supreme Court of the State of Illinois is appended hereto as Appendix A.

An earlier opinion of the Appellate Court of Illinois, Fourth Judicial District, and dissent thereto, is reported officially in 19 Ill. App. 3d 381 and unofficially in 311 N.E. 2d 615. A copy of the opinion delivered by the Appellate Court of Illinois, Fourth Judicial District, is appended hereto as Appendix B.

An earlier memorandum opinion delivered on January 8, 1973, by the Circuit Court of Vermilion County, Fifth Judicial Circuit of the State of Illinois, is not reported and a copy thereof is appended hereto as Appendix C.

## JURISDICTION

This action was instituted by appellants (plaintiffs-objectors) filing a complaint against defendants on September 16, 1971, for review under the Administrative Review Act of Illinois (Ill. Rev. Stats., 1971, Ch. 110, par. 264 et seq.) of a decision of the Superintendent of Educational Service Region of Vermilion County, Illinois, granting a petition requesting the calling of an election for the purpose of voting for or against the establishment of a community unit school district in certain territory described in said petition.

Such petition and proceedings to create a unit school district and complaint for administrative review were brought pursuant to the provisions of paragraph 11-6 of the Illinois School Code (Ill. Rev. Stats., Ch. 122, sec. 11-6).

The judgment and order of the Supreme Court of the State of Illinois sought to be reviewed was filed and entered of record on the 24th day of March, 1975, a copy thereof being appended hereto as Appendix D.

The Supreme Court of the State of Illinois on May 29, 1975, denied plaintiffs-objectors' petition for rehearing of the judgment and order sought to be reviewed, a copy of said order being appended hereto as Appendix E.

Plaintiffs-objectors' notice of appeal to the Supreme Court of the United States, together with proof of service on opposing counsel, was filed on June 10, 1975, with the Clerk of the Supreme Court of the State of Illinois, a copy of which is appended hereto as Appendix F.

Jurisdiction of the Supreme Court of the United States to review the judgment and order of the Supreme Court of the State of Illinois sought to be reviewed by direct appeal is conferred by Title 28 U. S. Code, Sec. 1257(2).



Cases believed to sustain the jurisdiction of the Supreme Court of the United States under Title 28 U. S. Code, Sec. 1257(2), to review by direct appeal the judgment and order of the Supreme Court of the State of Illinois are as follows:

Crowell v. Randell, 10 Peters (U.S.) 368 (1836);

Kenney v. Moose Lodge, 252 U.S. 411 (1920);

Bluefield Water Works and Improvement Co. v. Public Service Comm., 262 U.S. 679 (1923);

New York ex rel. Bryant v. Zimmerman, 278 U.S. 63 (1928);

Chesapeake and Ohio Railway Co. v. Mihas, 280 U.S. 102 (1929);

Dept. of Banking v. Pink, 317 U.S. 264 (1942);

Market St. Ry. Co. v. R.R. Comm., 324 U.S. 548 (1945);

Richfield Oil Corp. v. State Bd. of Equalization, 329 U.S. 69 (1946);

Young v. Ragen, 337 U.S. 235 (1949);

## STATUTE INVOLVED

The validity of Section 11-6 of the Illinois School Code, as amended by Public Act 77-604 of the General Assembly of the State of Illinois, effective July 31, 1971, is involved. The text of said amended section as it appears in Vol. 3 Ill. Rev. Stats., 1971, Chap. 122, par. 11-6, at pages 1244 and 1245, is appended hereto as Appendix G. The portion thereof which causes its validity to be involved reads as follows:

> "The decision of the regional superintendent denying the petition is an 'administrative decision' as defined in Section 1 of the 'Administrative Review Act', and any petitioner or resident who appears in support

of the petition at the hearing may apply for a review of such decision in accordance with the 'Administrative Review Act' and all amendments and modifications thereof and the rules adopted pursuant thereto."

## QUESTION PRESENTED

This appeal presents the following fundamental question for the reviewing court:

Is section 11-6 of the Illinois School Code, as amended by Public Act 77-604 and as construed by the Supreme Court of the State of Illinois, granting to petitioners the right of judicial review under the Illinois Administrative Review Act, but denying to objectors the right of judicial review under the Illinois Administrative Act, of an order entered by an administrative agency, after notice and hearing, allowing or denying a petition requesting the calling of an election for the purpose of voting for or against the establishment of a community unit school district in territory therein described, invalid under the Fourteenth Amendment to the Constitution of the United States as a denial to the objectors by the State of Illinois of the rights guaranteed them, of

A. The equal protection of its laws, and

B. Due process under its laws.



## STATEMENT OF FACTS

A petition signed by over 200 voters was filed with the Superintendent of Educational Service Region of Vermilion County, Illinois, on June 17, 1971, pursuant to the provisions of Sec. 11-6 of Illinois School Code as it then existed (1970 Supp., Ill. Rev. Stats., 1969, Chap. 122, sec. 11-6, p. 351 and 352), requesting that he call an election for the purpose of voting for or against the establishment of a community unit school district in certain territory described in the petition (Sup. Ct. Rec. 57C to 88C).

Section 11-6 of the Illinois School Code had been amended by Public Act 76-2269 of the General Assembly of the State of Illinois effective July 1, 1970, and as so amended was in force and effect on June 17, 1971. A copy of said Section 11-6 of the Illinois School Code as so amended and in effect on June 17, 1971, is appended hereto as Appendix H.

The territory proposed in the petition to be included in the suggested unit school district included all of the then existing Oakwood Township High School District No. 227, Vermilion County, Illinois, and all of its underlying elementary school districts, namely, Diamond School District No. 135, Fithian Community Consolidated School District No. 125, Muncie Consolidated School District No. 130, and Oakwood School District No. 132, all in Vermilion County, Illinois. In addition, the territory described in the petition included 1600 acres of land which had never been in Oakwood High School District, and which was part of an elementary district known as Newtown School District No. 109, Vermilion County, Illinois, and which was as well a part of Armstrong High School District No. 225. Said 1600 acre tract had a then assessed value for tax purposes of $9,024,920 and included the sole and only school building

in Newtown School District, which building was relatively new.

Verified written objections to the granting of said petition were filed with the Superintendent of Educational Service Region, Vermilion County, Illinois, on August 11, 1971, by one hundred fifty-nine individual legal voters of Newtown School District No. 109 (Sup. Ct. Rec. 91C to 106C) who are the plaintiffs-objectors and appellants here.

After publication of notice (Sup. Ct. Rec. 89C and 90c) a public hearing was held by the Superintendent of Eduactional Service Region on August 16, 1971, at which time evidence was presented by the petitioners and objectors to the petition, and the Superintendent granted the petition at the close of the hearing on August 16, 1971 (Sup. Ct. Rec. 112C and 113C).

A complaint for review pursuant to the Administrative Review Act of Illinois (Ill. Rev. Stats. 1971, Ch. 110, par. 264 et seq.) was filed on September 16, 1971, by the individual objectors to the petition and by the Board of Education of Armstrong High School District No. 225, Vermilion County, Illinois, the appellants here. (Sup. Ct. Rec. 3C to 18C.) A copy of the Administrative Review Act of the State of Illinois (Ill. Rev. Stats. 1971, Ch. 110, par. 264 et seq.) is appended hereto as Appendix J.

An answer to the complaint for administrative review was filed as required by the defendant Superintendent (Sup. Ct. Rec. 49C - 119C) and appearances were filed by other defendants (Sup. Ct. Rec. 19C - 24C).

The Circuit Court filed a memorandum opinion on January 8, 1973, finding the order of the Superintendent of Educational Service Region, Vermilion County, Illinois, granting the petition and calling an election to be contrary to



the manifest weight of the evidence and an order was entered setting aside the administrative order of defendant Superintendent (Sup. Ct. Rec. 96 - 102).

Defendants appealed to the Appellate Court of Illinois, Fourth Judicial District, on January 30, 1973, and briefs were filed in due course by all parties.

Subsequent to the filing of the petition requesting calling an election for the purpose of voting for or against the establishment of a community unit school district in certain territory therein described the 77th General Assembly of the State of Illinois further amended Section 11-6 of the Illinois School Code in 1971 by two different amendments, each effective July 31, 1971. Public Act 77-598, as to which final legislative action was taken on June 26, 1971, merely substituted the term "Superintendent of Educational Services Region" for "County Superintendent of Schools" in the Section. Public Act 77-604, as to which final legislative action was taken on June 28, 1971, is appended as Appendix G and is the statute whose validity is questioned.

Thereafter, while the case was pending before the Appellate Court of Illinois, Fourth Judicial District, and before oral argument of the case in the Appellate Court, the 78th General Assembly of the State of Illinois in 1973 again amended section 11-6 of the Illinois School Code by Public Act 78-732, effective October 1, 1973 (Ill. Rev. Stats., 1973, Sec. 11-6), a copy of said section as so amended being appended hereto as Appendix I. As so amended, such Act was in effect on the date of the opinion of both the Appellate Court of Illinois, Fourth Judicial District, and of the Supreme Court of the State of Illinois. By such amendatory Act the portion thereof the validity of which is challenged in Public Act 77-604 was changed to read as follows:

"A decision of the regional superintendent or Super-

intendent of Public Instruction denying or approving the petition, whether made prior or subsequent to the effective date of this Act, shall be a final decision, from which no review or appeal shall be had or taken. However, this amendatory Act of 1973 shall not be construed to affect applications for review which were perfected pursuant to the provisions of the 'Administrative Review Act' before the effective date of this Act."

The Appellate Court of Illinois, Fourth Judicial District, at oral argument of the case on February 19, 1974, called the amendment of Section 11-6 of the Illinois School Code by Public Act 77-604 to the attention of counsel and on its own motion dismissed the appeal for want of jurisdiction. (App. Ct. Rec. 1-2.) The basis of the Appellate Court action was that Section 11-6 of the Illinois School Code as so amended did not grant the right of appeal, or judicial review, under the Administrative Review Act to objectors to such petition but granted such rights only to the petitioners if their petition was denied.

By leave of court, plaintiffs-objectors thereafter filed in the Appellate Court of Illinois, Fourth Judicial District, their motion to vacate such order of dismissal for want of jurisdiction entered February 19, 1974, and suggestions in support thereof. (App. Ct. Rec. 3-19.)

In such motion to vacate the order of February 19, 1974, plaintiffs-objectors noted that dismissal of the appeal on jurisdictional grounds raised for the first time the question of constitutionality of Public Act 77-604, and in support of said motion to vacate specifically alleged in paragraph 4 thereof as follows:

"That Section 11-6 of the Illinois School Code, as amended by P.A. 77-604, is unconstitutional for the following reasons:



A. It is a violation of the equal protection of the law clause of both the Federal Constitution and the Illinois Constitution of 1970;

B. It is a violation of the due process clause of both the Federal Constitution and the Illinois Constitution of 1970;

C. It is an unconstitutional delegation of legislative authority."

Plaintiffs-objectors' motion to vacate such order of dismissal was denied and the Appellate Court of Illinois, Fourth Judicial District, filed its opinion on May 14, 1974, holding Public Act 77-604 valid and not unconstitutional. (App. Ct. Rec. 35-43), the Appellate Court opinion and dissent therefrom being appended hereto as Appendix B.

Plaintiffs-objectors' petition for rehearing (App. Ct. Rec. 44-59) was denied by the Appellate Court on June 6, 1974 (App. Ct. Rec. 60).

Thereafter plaintiffs-objectors filed their petition for leave to appeal as a matter of right with the Supreme Court of the State of Illinois on July 8, 1974, (Supp. Sup. Ct. Rec. 1). Such petition was allowed by the Supreme Court of the State of Illinois on September 27, 1974 (Supp. Sup. Ct. Rec. 2), and plaintiffs-objectors elected to allow such petition to stand as their brief.

In the petition for leave to appeal plaintiffs-objectors relied upon four points for reversal of the Appellate Court, as follows: (Supp. Sup. Ct. Rec. 1.)

I. Public Act 77-604 is unconstitutional as a violation of the equal protection clause of both the Federal Constitution and the Illinois Constitution of 1970.

II. Public Act 77-604 is unconstitutional as a violation

of the due process clause of both the Federal Constitution and the Illinois Constitution of 1970.

III. Public Act 77-604 is a special law when a general law could be made applicable, in violation of Section 13 of Article IV of the Illinois Constitution of 1970.

IV. Public Act 77-604 is an unconstitutional delegation of legislative authority to an administrative officer, in violation of Section 1 of Article II of the Illinois Constitution of 1970 concerning separation of powers.

The Supreme Court of the State of Illinois thereafter on March 24, 1975, delivered its opinion and entered the order appealed from (Sup. Ct. Rec. 2-3), such opinion being appended hereto as Appendix A, and the order appealed from being appended hereto as Appendix D.

Plaintiffs-objectors filed their petition for rehearing with the Supreme Court of the State of Illinois on April 10, 1975 (Sup. Ct. Rec. 4), which petition for rehearing was denied by order of said court entered on May 29, 1975 (Sup. Ct. Rec. 5), a copy of said order denying said petition for rehearing being appended hereto as Appendix E.

The Supreme Court of the State of Illinois in its opinion first noted that it was not considering the constitutionality of Public Act 78-732 and the pending proceedings were governed only by the provisions of Public Act 77-604. This conclusion was properly reached because of the saving clause in Public Act 78-732 that the amendatory Act did not affect pending applications for administrative review, and if Public Act 78-732 were declared invalid in its entirety Public Act 77-604 would be reinstated by virtue of the case of Fiorito v. Jones, 39 Ill. 2d 531, 541.

Thereafter, in its opinion, the Supreme Court of the State of Illinois specifically held in unequivocal language



that "although Public Act 77-604 by its language gives only supporters of the petition the right to review under the Administrative Review Act, it does not follow that such a provision is unconstitutional."

The Supreme Court of the State of Illinois then proceeds in its opinion to purportedly justify its conclusion by stating that such situation is analogous to the circumstances found in Supreme Court Rule 304 under which there are specified exceptions to the rule that an appeal will lie only from a final judgment. Its analogy is that if the petition is denied such denial effectively stops all proceedings thereunder, but if the petition is granted there are further proceedings in which objectors may yet prevail, by either carrying the election or challenging a new district in a proceeding in quo warranto or other proceeding. Thus the Supreme Court of the State of Illinois construes and interprets Public Act 77-604 as not unfairly discriminating between objectors and petitioners.

Thereafter, on June 4, 1975, pursuant to plantiffs-objectors' motion to stay enforcement of judgment and issuance of mandate and for supersedeas, with memorandum in support thereof, after notice to and objections by defendants, and after hearing before the Chief Justice of the Supreme Court of the State of Illinois, the Chief Justice of the State of Illinois entered an order staying the enforcement and execution of its judgment entered March 24, 1975, and the issuance of the mandate of the court, pending disposition of the appeal by plaintiffs-objectors to the Supreme Court of the United States (Sup. Ct. Rec. 6), and the Chief Justice also approved the supersedeas bond of the United States Fidelity and Guaranty Co. tendered by plaintiffs-objectors in the amount of $1,000.00, all of which were filed with the Clerk of the Supreme Court of the State of Illinois on June 5, 1975. (Sup. Ct. Rec. 6 et seq.)

Thereafter notice of appeal by plaintiffs-objectors to the Supreme Court of the United States was filed on June 10, 1975, with the Clerk of the Supreme Court of the State of Illinois, with proof of service on opposing counsel (Sup. Ct. Rec. 7 — Appendix F).

From the foregoing facts, amply supported by the record, and from the decisions of the Supreme Court of the United States previously referred to, we respectfully submit that the judgment or decree of the Supreme Court of the State of Illinois appealed from is

1. A final judgment;

2. Rendered by the highest court of the State of Illinois from which a decision could be had;

3. Which judgment draws in question the validity of an Illinois statute, being Public Act 77-604 of the General Assembly of the State of Illinois;

4. On the ground that such statute is repugnant to the Constitution of the United States as a violation of both the equal protection clause and the due process clause of the Fourteenth Amendment of such Constitution;

5. Which questions actually arose in and were properly before the Illinois Supreme Court;

6. Which questions were actually passed upon by the State courts of the State of Illinois;

7. And the decision of the Supreme Court of the State of Illinois was in favor of the validity of said Public Act 77-604,

all so as to justify jurisdiction of the Supreme Court of the United States as conferred by Title 28 U. S. Code, section 1257(2) if the alleged Federal Question presented is real and substantial.



## THE FEDERAL QUESTION IS REAL AND SUBSTANTIAL

The Illinois statute involved, as construed and interpreted by the Supreme Court of the State of Illinois, brings into focus the procedural question of application of the equal protection and due process clauses of the Fourteenth Amendment of the Constitution of the United States to judicial review of or relief from action of an administrative agency.

1. Counsel in their research of the question have found no statute or factual situation presented to the Supreme Court of the United States directly analogous to that presented in the instant case.

The lower courts in their opinions have ignored and apparently failed to consider the well established legal principle that a statute is invalid as a violation of the equal protection and due process clause if it prescribes a rule of procedure which operates as an arbitrary and unjust discrimination between parties to an appeal who are similarly situated.

Griffin v. Illinois, 351 U.S. 12 (1956);

Burns v. Ohio, 360 U.S. 252 (1959);

Douglas v. Green, 363 U.S. 192 (1960);

Smith v. Bennett, 365 U.S. 708 (1961);

Rinaldi v. Yeager, 384 U.S. 305 (1966);

Mayer v. Chicago, 404 U.S. 189 (1971);

Lindsey v. Normet, 405 U.S. 56 (1972).

The Illinois courts also ignored in their opinions the well established principle of earlier decisions that unilateral restrictions of this character on the right of review are repugnant to the constitutional provisions guaranteeing

every person equal protection of the law and that every citizen has a right, under such guaranties, to insist that his rights of life, liberty and property shall be determined by the same rules which settle and determine similar rights of others similarly situated.

Jones v. C.R.I. & P. Ry. Co., 231 Ill. 302 (1908);

Hecker v. I.C.R.R. Co., 231 Ill. 574 (1908);

Green v. Red Cross Medical Service Co., 232 Ill. 616 (1908);

Zolnowski v. Ill. Steel Co., 233 Ill. 299 (1908);

Hackett v. Chicago City Ry. Co., 235 Ill. 116 (1908);

Reinhardt v. Chicago Junction Ry. Co., 235 Ill. 576 (1908);

People v. Sholem, 238 Ill. 203 (1909);

Funkhouser v. Randolph, 287 Ill. 94 (1919).

Of the foregoing authorities cited, only the last one of Funkhouser v. Randolph, 287 Ill. 94, concerned the review of a decision by an administrative agency, and that did not involve review of such decision under the Illinois Administrative Review Act. (Ill. Rev. Stats., 1971, Ch. 110, Sec. 264 et seq.)

2. The problem of judicial review of an administrative agency, which is the central problem of administrative law to which most of the tremendous business of administrators is never subjected (28 Fordham Law Review 6), necessarily brings the judicial process into conflict with the administrative process and presents vital questions as to the relative roles of administrative agencies and the courts in our system of government. Universal Camera Corp. v. N.L.R.B., 340 U.S. 474 (1951).

Both administrative agencies and the courts are governmental instruments for realizing public purposes, and they are deemed collaborative instrumentalities of justice rather than business rivals or competitors in the task of safeguarding the public interest. United States v. Ruzicka, 329 U.S. 287 (1946). The role of the courts in regard to administrative action is the accommodation of the administrative process to the traditional judicial system (Rochester Tel. Corp. v. U.S., 307 U.S. 125 (1939), and the reconciliation of democratic safeguards and standards of fair play with the effective conduct of government. Brownell v. We Shung, 352 U.S. 180 (1956).



The availability and extent of judicial review of or relief from administrative action are to a very considerable degree molded by the courts themselves, whether or not statutes attempt to define the role of the judiciary in relation to the administrative, and in the last analysis, depend upon the courts' attitude toward the fundamental issue of policy involved rather than upon legalistic rules and doctrines. Stark v. Wickard, 321 U.S. 288 (1944).

However, the continuing growth of administrative law, the different fields in which administrative agencies operate, the variety of their functions and purposes, and the variety in the manner in which the legislature in different statutes has distributed the responsibilities of law enforcement as between the courts and administrative agencies counsel against excessive generalizations regarding judicial review of administrative action. U.S. v. Ruzicka, 329 U.S. 287 (1946). The question of judicial review of the action of any particular agency must still be determined by critical attention to the specific circumstances of such agency, the parties dealing with it, and the statutes governing it.

In determining whether a statute precludes judicial review, mere failure to provide for judicial intervention is

not conclusive, nor is the presence of language which appears to bar such review. Each statute in question must be examined individually, its purpose and history as well as its text are to be considered in deciding whether the courts were intended to provide relief for those aggrieved by administrative action. Heikkila v. Barber, 345 U.S. 229 (1953), rehearing denied 345 U.S. 946.

Where a statute specifically provides for direct judicial review of many questions arising under its administration and thus recognizes the applicability of judicial review in the particular field, it is not to be lightly assumed that the silence of other provisions of the statute as regards judicial review bars from the courts an otherwise justiciable issue. U.S. v. Interstate Comm. Comm., 337 U.S. 426 (1949).

Statutes declaring a determination by an administrative agency to be final and precluding judicial review have been held unconstitutional. Ohio Valley Water Co. v. Ben Avon, 253 U.S. 287 (1920).

3. Section 11-6 of the Illinois School Code (Ill. Rev. Stats., Ch. 122, sec. 11-6), originally approved many years ago and amended from time to time, authorizes the organization of community unit school districts in the State of Illinois and follows much the same pattern from year to year except as amendments alter one item or another.

Those portions of section 11-6 of Ill. Rev. Stats., Ch. 122, contained therein prior to the filing of the petition here in question, at all times since filing of such petition, and during the pendency of this suit, and at the present time, are substantially as follows: (a) certain minimum territorial requirements; (b) the filing with a designated administrative agency of a petition, signed by 200 or more voters residing within the territory of the proposed community unit school district, requesting the calling of an



election for the purpose of voting for or against the establishment of a community unit school district in the territory, describing the territory comprising the proposed district, and meeting certain other procedural requirements; (c) hearing on said petition by the administrative agency, after publication of certain prescribed notice, at which hearing any resident in the proposed district or any district affected thereby may appear in support of the petition or to object thereto; (d) at such hearing the administrative agency shall hear evidence as to the school needs and conditions in the territory and in the area within and adjacent thereto and take into consideration the division of funds and assets which will result from the organization of the district, shall determine whether it is for the best interests of the schools of the area and the educational welfare of the pupils therein that such district be organized; and (e) the administrative agency will make a decision either approving or denying the petition, and if approved call an election in the territory as petitioned.

All versions of section 11-6 of the Illinois School Code concerning organizations of community unit school districts from its origin until adoption of Public Act 77-604, the validity of which is here challenged, provided for judicial review of the administrative agency's decision as follows:

> "The decision of the county superintendent is an 'administrative decision', as defined in Section 1 of the 'Administrative Review Act', and any petitioner or resident who appears at the hearing may apply for a review of such decision in accordance with the 'Administrative Review Act' and all amendments and modifications thereof and the rules adopted pursuant thereto. The commencement of any action for review shall operate as a supersedeas, and no election shall be held pending final disposition of such review."

Such were the provisions on June 17, 1971, at the time of filing of the petition here in issue.

On July 31, 1971, Public Act 77-598 became effective, substituting the term "superintendent of an educational service region" for the term "county superintendent of schools" in Section 11-6 of the Illinois School Code, but no changes were made in the provisions thereof pertaining to judicial review.

Likewise on July 31, 1971, Public Act 77-604 amended Section 11-6 of the Illinois School Code, which amendment is here challenged as rendering said statute invalid, by changing the provisions thereof concerning judicial review of the administrative agency's decision to read as follows:

> "A decision of the regional superintendent denying the petition is an 'administrative decision' as defined in Section 1 of the 'Administrative Review Act', and any petitioner or resident who appears in support of the petition at the hearing may apply for a review of such decision in accordance with the 'Administrative Review Act' and all amendments and modifications thereof and the rules adopted pursuant thereto."

Such were the provisions of section 11-6 of the Illinois School Code concerning judicial review at the time of filing plaintiffs-objectors' objection to the petition, at the time of hearing on the petition, and at the time of filing plaintiffs-objectors' complaint for administrative review.

The Court's attention is directed to the fact that Public Act 77-604 affirmatively makes the administrator's decision denying the petition a final decision and affirmatively grants the petitioners a right of judicial review, while such amendatory act makes no mention whatsoever of the status of an administrator's decision granting the petition over objections, nor of the right of such objectors to judicial review of such an administrator's adverse decision, and



the amendment neither grants nor denies such right of judicial review to objectors. The courts of Illinois, however, have construed such Public Act 77-604 as validly denying to objectors judicial review of an administrative decision allowing a petition while granting under the Administrative Review Act of Illinois to petitioners such right of judicial review of an administrative order denying such petition.

It is contended that this construction renders Public Act 77-604 invalid as a violation of the equal protection and due process clauses in the Fourteenth Amendment to the Constitution of the United States.

On October 1, 1973, while this case was pending on appeal in the Illinois Appellate Court, Public Act 78-732 further amended Section 11-6 of the Illinois School Code, so far as judicial review of the administrative agency's decision is concerned, to read as follows:

> "A decision of the regional superintendent or Superintendent of Public Instruction denying or approving the petition, whether made prior or subsequent to the effective date of this Act, shall be a final decision, from which no review or appeal shall be had or taken. However, this amendatory Act of 1973 shall not be construed to affect applications for review which were perfected pursuant to the provisions of the 'Administrative Review Act' before the effective date of this Act."

The Supreme Court of the State of Illinois in its opinion notes this provision, and the saving clause thereof, and correctly holds that such amendment does not render this case moot, and that the constitutionality of such amendment is not here in issue. The application for judicial review here in issue was perfected pursuant to the provisions of the Administrative Review Act of Illinois before

the effective date of Public Act 78-732 by filing of the complaint for judicial review on September 16, 1971. If Public Act 77-604 is invalid as contended, Section 11-6 of the Illinois School Code as it previously existed would be reinstated and would control plaintiffs-objectors' rights to judicial review. Fiorito v. Jones, 39 Ill. 2d 531, cited by the Illinois Supreme Court in its opinion.

For the same reason that the Illinois Supreme Court correctly held Public Act 78-732 did not render this case moot, Public Act 77-604 does not render this case moot, unless Public Act 77-604 is valid as construed, contrary to our contentions. If Public Act 77-604 as construed is held valid, or the opinion of the Supreme Court of the State of Illinois is permitted to stand as the law, judicial authority will be available in the State of Illinois as well as to all the States and to Congress justifying unilateral restriction of the right to judicial review of administrative decisions to one only of the parties involved, contrary to the provisions of our Constitutions and the spirit of administrative law previously discussed.

Under Section 11-6 of the Illinois School Code (Ill. Rev. Stats., Ch. 122, sec. 11-6), the administrative agency has one basic function, and that is to decide whether or not to grant a petition to call an election for the purpose of voting for or against a community school district in certain territory described in the petition. In making such decision the administrative agency must follow certain criteria and guidelines prescribed by the statute as to school needs in the described territory and in the area adjacent thereto and whether it is for the best interests of the schools of such areas and the educational welfare of the pupils therein. If the petition is granted, an election is called by the administrative agency to be held in the described territory on the proposition and only legal voters residing in such



territory have the right to vote in such election. Objectors to the petition who reside in the area affected by the petition but outside the territory described have no right to vote against the proposition. If the petition is denied, no election is called by the administrative agency and petitioners who reside in the territory described have no opportunity to vote for the proposition. Thus both petitioners and objectors are similarly situated and similarly affected by the decision of the administrative agency granting or denying the petition, and are entitled to equal procedural remedies.

However, under Public Act 77-604 as construed by the Supreme Court of the State of Illinois, only the petitioners have the right of judicial review under the Illinois Administrative Review Act (Ill. Rev. Stats., 1971, Ch. 10, sec. 264) of an administrative decision denying the petition, and though similarly situated, objectors have no right of judicial review of an administrator's decision granting such petition.

Under Public Act 77-604 as construed by the Supreme Court of the State of Illinois, only the petitioners have the right under the Illinois Administrative Review Act to have all questions of law and of fact presented by the entire record before the administrative agency heard and determined by a court. (Ill. Rev. Stats., 1971, Ch. 110, sec. 274.) As construed by the Supreme Court of the State of Illinois, such decision by the administrative agency denying an election as prayed is final as to petitioners requesting such election, but an administrative decision by the administrative agency granting an election as prayed according to such construction is not final as to objectors to said petition.

The Supreme Court of the State of Illinois reaches this conclusion even though such language is not in the amend-

ment complained of and even though objectors have no right to vote in the election so ordered. The only issue before the administrative agency on the petition is whether or not an election should or should not be held on the proposition, which issue is required to be determined by the administrative agency according to certain statutory guidelines and criteria. The answer to that question, yes or no, is a final decision of the administrative agency.

No other statutory, equitable or common law mode of review of such decision of the administrative agency granting the petition is available to objectors to such petition as a matter of right, whereby all questions of law and of fact presented by the entire record can be heard and determined by a court, contrary to the inferences of the opinion by the Supreme Court of the State of Illinois.

The existence of other remedies such as the common law writ of certiorari and the now statutory writ of quo warranto, as suggested by the Illinois Courts, is certainly acknowledged. However, the equality of remedies must be considered at the point in proceedings when the regional superintendent reaches a decision that an election may or may not be called.

The common law writ of certiorari extends only to the question of jurisdiction, and the issue as to whether or not a court or an administrative agency acted within the manifest weight of the evidence as disclosed by the facts and the record is not reviewable on certiorari. 7 Illinois Law and Practice, "Certiorari", Ch. 2, sec. 31 and 35 and cases cited.

The statutory writ of quo warranto, Ill. Rev. Stats., 1973, Ch. 112, para. 9 et seq., is not a writ of right but lies in the sound discretion of the court. People v. White Circle League, 408 Ill. 564 (1951). By its nature it is a collateral



rather than a direct attack upon an action taken by a public official and is therefore a prerogative writ which is administered by the courts with due deliberation and caution and in the exercise of sound discretion. People ex rel. Adamowski v. Wilson, 20 Ill. 2d 568 (1961). It is not a function of the writ of quo warranto to determine the legality of official acts of public officials whose right to hold office and whose authority to act is not questioned. People ex rel. Hettleman v. Board of County Commissioners, 102 Ill. App. 2d 310 (1968). The writ of quo warranto could only raise the issue of the regional superintendent's authority by statute to call an election, at the point of proceedings where he makes a decision calling the election and such proceeding could not reach the facts and record which form the basis of the decision. People ex rel. Hamer v. Board of Education, 132 Ill. App. 2d 46 (1971).

The analogy to Illinois Supreme Court Rule 304 made by the Supreme Court of the State of Illinois in its opinion is likewise mistaken in this factual situation. Illinois Supreme Court Rule 304 pertains to appeals from final judgments that do not dispose of an entire proceeding, in cases where there are multiple parties or multiple claims for relief. Such rule prescribes that any judgment that adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties is not enforceable or appealable in the absence of a special express written finding of the trial court that there is no just reason for delaying enforcement or appeal. The class established under Illinois Supreme Court Rule 304 is composed of two adverse parties, a plaintiff and a defendant, in an action where there are multiple plaintiffs and defendants or multiple claims. The plaintiff and defendant as to an issue are treated equally. They each must wait for a special written finding of the trial court before their inchoate right of appeal becomes

an actual right but both plaintiff and defendant have the right to appeal from a final judgment. In the instant case there are multiple plaintiffs and defendants. There is one issue — the propriety of granting or denying a petition by an administrative agency. One decision has been made, granting such petition. There has been no decision on fewer than all the issues nor as to other than all the plaintiffs and all the defendants. All the plaintiffs have appealed the final decision on the petition as to all the defendants. Although Illinois Supreme Court Rule 304 serves a reasonable purpose in preventing piecemeal appeals from final judgments in cases where there are multiple parties and multiple claims, it does presuppose the entry of a final judgment, as in our case, determining all issues as to all parties, and such Rule has no analogy to the present state of facts. As previously indicated, not only is a denial of the petition a final order as to petitioners, but the granting of the petition is a final order as to objectors. There are no further equivalent proceedings in which objectors may prevail, contrary to the conclusion of the Supreme Court of the State of Illinois. The objectors to the petition in no way can carry the election and preclude the formation of the community unit school district because they have no right to vote in the election since they are not legal voters within the proposed unit school district territory. They are only voters within areas of districts adversely affected by but not within the territorial limits of the proposed district. Neither do they have available, as a matter of right, any other statutory, equitable or common law mode of review of the administrative decision, as do the defendants, whereby all questions of law and fact presented by the entire record can be determined and heard by a court.

The history of section 11-6 of the Illinois School Code, as amended, from its very nature causes Public Act 77-604



to smack of a denial of equal protection and due process of law as to objectors to a petition for creation of a unit school district. Until adoption of the challenged amendment, Public Act 77-604, on July 31, 1971, section 11-6 of the Illinois School Code from its inception provided for judicial review under the Illinois Administrative Review Act by either petitioners or objectors, and for the delay of any election called until resolution of the review.

On July 31, 1971, only eleven days before filing of plaintiffs' objections to the petition and only forty-eight days before filing of plaintiffs' complaint for judicial review, Public Act 77-604 amended section 11-6 of the Illinois School Code to provide for judicial review under the Illinois Administrative Review Act of a decision of the administrative agency denying a petition to call an election to vote for or against creation of a community unit school district. Nothing in such amendment referred to judicial review of a decision of the administrative agency granting such a petition. The decision appealed from construed such amendment as denying objectors to such petition judicial review of such decision granting the petition. Such construction is challenged as causing section 11-6 of the Illinois School Code as so amended to be invalid as a violation of equal protection and due process clauses.

On October 1, 1973, Public Act 78-732 again amended section 11-6 of the Illinois School Code so as to provide no judicial review to either petitioners or objectors under the Illinois Administrative Review Act, but made the decision of an administrative agency granting or denying such petition final. The constitutionality or validity of Public Act 78-732 is not here in issue, but the Supreme Court of Illinois in its opinion noted its existence. It is submitted that the General Assembly of Illinois in passing Public Act 78-732 realized that the classification and amendment

in Public Act 77-604 was arbitrary and denied equal protection and due process of the law to objectors and also that the instant litigation was pending, and passed Public Act 78-732 to correct such inequality and to preserve the rights of the litigants.

We respectfully submit that from the foregoing discussion of the question presented and of the opinion of the Supreme Court of the State of Illinois appealed from, it is apparent that not only is the Federal question involved most real but it is of substantial public importance and impact in an area concerning judicial review of administrative decisions which has not been directly passed upon previously.

If the decision of the Supreme Court of the State of Illinois stands and is not reversed a precedent will exist which permits legislative bodies to arbitrarily and unjustly discriminate against objectors to administrative action by depriving them of judicial review while granting such review to petitioners.

## CONCLUSION

For the reasons stated above, and the facts as they appear in the record filed herewith, jurisdiction of the Supreme Court of the United States as conferred by Title 28 U.S. Code, sec. 1257(2) is amply justified, the Federal question presented is substantial and of real public importance, and this Honorable Court should note probable jurisdiction of this appeal.

Respectfully submitted,

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## APPENDIX A
## OPINION OF THE COURT BELOW DISMISSING COMPLAINT

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**IN THE**
**SUPREME COURT OF THE STATE OF ILLINOIS**

**Docket No. 46837**

Board of Education of Armstrong High School District #225, et al., Appellants

vs.

James H. Ellis, Superintendent of Education Service Region, Vermilion County, Illinois, et al., Appellees

Appeal from Appellate Court Fourth District

Opinion filed March 24, 1975.
Rehearing denied May 29, 1975.

MR. JUSTICE DAVIS delivered the opinion of the court:

This case arises out of an action in administrative review heard in the circuit court of Vermilion County. A petition was filed with the Superintendent of the Educational Service Region of Vermilion County on June 17, 1971, requesting that he call an election to vote on the establishment of a unit school district pursuant to section 11-6 of the School Code (Ill. Rev. Stat. 1969, ch. 122, par. 11-6). A public hearing was held on August 16, 1971, at which time evidence was presented by the petitioners and objectors to the petition. The superintendent granted the petition at the close of the hearing, and on September 16, 1971, the objectors filed this action for review pursuant to the Administrative Review Act (Ill. Rev. Stat. 1971, ch. 110, par. 264 et seq.). The circuit court of Vermilion County set aside the order

of the regional superintendent, and the superintendent and others appealed to the appellate court. That court, on its own motion, dismissed the appeal for want of jurisdiction in that it found that there was no jurisdiction for the bringing of an administrative review proceeding in the circuit court. (19 Ill. App. 3d 381.) We granted leave to appeal.

Section 11-6 of the School Code, as amended by Public Act 77-604, effective July 1, 1971, provided:

> "A decision of the regional superintendent denying the petition is an 'administrative decision' as defined in Section 1 of the 'Administrative Review Act', and any petitioner or resident who appears in support of the petition at the hearing may apply for a review of such decision in accordance with the 'Administrative Review Act' and all amendments and modifications thereof and the rules adopted pursuant thereto." Ill. Rev. Stat. 1971, ch. 122, par. 11-6.

In 1973, by Public Act 78-732, the General Assembly again amended section 11-6 of the School Code to provide:

> "A decision of the regional superintendent or Superintendent of Public Instruction denying or approving the petition, whether made prior or subsequent to the effective date of this Act, shall be a final decision, from which no review or appeal shall be had or taken. However, this amendatory Act of 1973 shall not be construed to affect applications for review which were perfected pursuant to the provisions of the 'Administrative Review Act' before the effective date of this Act." Ill. Rev. Stat. 1973, ch. 122, par. 11-6.

It plainly appears that the proceedings under consideration in this review are governed by the provisions of Public Act 77-604 whether the later amendment, Public Act 78-732, is constitutional or unconstitutional. If valid, the saving clause of that amendment provides that pending applications for review, such as this, are not affected. If the amendment were to be declared invalid in its entirety



the provisions of Public Act 77-604 would be reinstated. (Fiorito v. Jones, 39 Ill. 2d 531, 541.) Thus, we need not consider the constitutionality of that part of Public Act 78-732 which denies all review of the decisions of the regional superintendent or Superintendent of Public Instruction denying or approving petitions because that provision is not involved in this proceeding.

Although Public Act 77-604 by its language gives only supporters of the petition the right to review under the Administrative Review Act, it does not follow that such a provision is unconstitutional. We find this situation to be analogous to the circumstances found in Supreme Court Rule 304 (50 Ill. 2d R. 304), under which there are specified exceptions to the rule that an appeal will lie only from a final judgment. Here a denial of the petition effectively stops all proceedings thereunder, and in effect it is thus a final judgment against the petitioners. However, if the petition is granted, there are further proceedings in which the objectors may yet prevail. The objectors could carry the election which would preclude the formation of the new unit school district. If the proposal were to be defeated there would be no cause for the objectors to the petition to seek review. If the election were to be won by those in favor of forming the proposed new unit district, the new district could then be challenged by the objectors in a proceeding in quo warranto. (Ill. Rev. Stat. 1973, ch. 112, par. 9 et seq.) Consequently, the provisions of Public Act 77-604 limiting review of the superintendent's order to those instances where that order denies the petition and terminates the proceedings do not unfairly discriminate as between objectors and petitioners. By the specification of the use of quo warranto herein, we do not mean to indicate that other civil actions may not be available in a given situation, or that such action affords the only available remedy.

It is a cardinal rule of statutory construction that a statute will always be construed so as to uphold its constitutionality if possible. (People v. Nastasio, 19 Ill. 2d 524, 529.) We believe this result to be in full conformity with the intent of the legislature to preclude what would amount to interlocutory appeals when the petition is granted. It affords both petitioners and objectors protection against arbitrary refusals to grant proper petitions, as well as the erroneous creation of new districts.

Since the provisions of the controlling amendment to the School Code did not authorize administrative review of the decision granting the prayer of the petition, the plaintiffs-objectors could not seek a review of this decision under the Administrative Review Act, and it is unnecessary to consider the many allegations of their complaint. The circuit court had no jurisdiction to review the decision under the Administrative Review Act, and it erred in setting aside the order granting the petition.

The appellate court did not reverse the order of the circuit court but rather dismissed the appeal. The net effect of this dismissal was to leave the order of the circuit court of Vermilion County in full force and effect. (See Supreme Court Rule 369(b) (50 Ill. 2d R. 369(b).) The appropriate order would have been to reverse the judgment of the circuit court of Vermilion County and to remand the cause with directions to dismiss the complaint. Bankers Life and Casualty Co. v. City of Chicago, 21 Ill. 2d 172; LaSalle National Bank v. City of Chicago, 3 Ill. 2d 375.

The judgments of the appellate and circuit courts are reversed, and the cause is remanded to the circuit court of Vermilion County with directions to dismiss the complaint.

Reversed and remanded with directions.



## APPENDIX B

## OPINION OF APPELLATE COURT BELOW DISMISSING APPEAL

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**APPELLATE COURT OF ILLINOIS,**
**FOURTH DISTRICT**

**Docket No. 12205**

Board of Education of Armstrong High School District No. 225, Counties of Vermilion and Champaign and State of Illinois, et al.,

Plaintiffs-Appellees,

v.

James H. Ellis, Superintendent of Educational Service Region, Vermilion County, Illinois, et al.,

Defendants-Appellants.

Opinion filed May 14, 1974.
Rehearing denied June 6, 1974.

CRAVEN, Justice.

On June 17, 1971, a petition was filed with the superintendent of the educational service region of Vermilion County requesting that he call an election to vote on the establishment of a community school district in the area described in the petition. The petition filed with the regional superintendent purported to be filed under the provisions of section 11-6 of the School Code. (Ill. Rev. Stat. 1971, ch. 122, Sec. 11-6.) A public hearing was held on the petition on August 16, 1971. Evidence presented on behalf of the petitioners and objectors was heard. The defendant Ellis granted the petition. On September 16, 1971, certain objectors filed a petition for review under the

Administrative Review Act (Ill. Rev. Stat. 1971, ch. 110, sec. 264-279) seeking to review the decision of the regional superintendent. Ultimately, the circuit court of Vermilion County rendered a decision setting aside the order of the regional superintendent. This appeal is to review that action of the circuit court.

This court has no jurisdiction of this case and there was no jurisdiction for administrative review in the circuit court. Although initially this issue was not briefed by the parties, this court on its own motion raised the question of jurisdiction, dismissed the appeal, has received supplemental briefs upon the issue and now considers that issue upon a motion to vacate our order on appeal.

The chronology above set forth indicates that the petition for review under the Administrative Review Act was filed on September 16, 1971. In the year 1971, section 11-6 of the School Code was amended. The substantive effect of that amendment was to provide that a decision of the regional superintendent *denying* a petition such as the one with which we are here concerned is defined as an administrative decision subject to review under the Administrative Review Act. The amendatory legislation, being Public Act 77-604, was passed prior to July 1, 1971, was approved by the governor on July 31, 1971, and was in full force and effect as of the date of this entire proceeding. The regional superintendent approved the petition and his action in approval of the petition is not defined as an administrative decision subject to review under the Administrative Review Act.

The Administrative Review Act applies to and governs every action to review judicially a final decision of an administrative agency where the act creating or conferring power on the agency by express reference adopts the pro-



visions of this Act. In the event that the Administrative Review Act is applicable, other statutory, equitable or common law modes of review are not employed to review such a decision. (See Ill. Rev. Stat. 1971, ch. 110, sec. 265.) Whereas here the Administrative Review Act is not applicable to review a decision of an administrative officer, other statutory, equitable or common law modes of review remain available.

The appellate court for the fifth district specifically considered this issue in Mills Prairie Community High School v. Miller, 15 Ill. App. 3d 87, 303 N.E. 2d 603, and said:

> "Since the School Code does not provide for administrative review when a regional superintendent approves a petition, it was appropriate in this case for the appellants to seek a writ of certiorari and to ask for an injunction against further proceedings • • •."

The appellants in their motion to vacate our order of dismissal concede the statutory framework above indicated but urge that Public Act 77-604 amending section 11-6 of the School Code is unconstitutional in that it provides for administrative review only in the event of a denial of the petition by the regional superintendent. We are not so persuaded. We see no constitutional infirmity in providing for administrative review of an order denying a petition and leaving review of an order approving a petition to other remedies. The legislative authority over school districts with reference to the taking of school facilities, the creation of districts, changing of boundaries, is sufficiently broad to provide for such legislative discretion. The scope of the legislative will has been described in People v. Deatherage, 401 Ill. 25, pp. 31-32, 81 N.E. 2d 581, 586, as follows:

> "• • • With or without the consent of the inhabitants of a school district, over their protests, even without notice or hearing, the State may take the school facil-

ities in the district, without giving compensation therefor, and vest them in other districts or agencies. The State may hold or manage the facilities directly or indirectly. The area of the district may be contracted or expanded, it may be divided, united in whole or in part with another district, and the district may be abolished. All this at the will of the legislature. The 'property of the school district' is a phrase which is misleading. The district owns no property, all school facilities, such as grounds, buildings, equipment, etc., being in fact and law the property of the State and subject to the legislative will. People ex rel. Taylor v. Camargo School Dist., 313 Ill. 321, 145 N.E. 154, and cases cited therein."

More recently, the Illinois Supreme Court said:

"It is provided in section 2 of article II of the constitution of the State of Illinois that 'No person shall be deprived of life, liberty or property, without due process of law.' Any school district established under enabling legislation is entirely subject to the will of the legislature thereafter. With or without the consent of the inhabitants of a school district, over their protests, even without notice or hearing, the State may take the school facilities in the district, without giving compensation therefor, and vest them in other districts or agencies. The State may hold or manage the facilities directly or indirectly. The area of the district may be contracted or expanded, it may be divided, united in whole or in part with another district, and the district may be abolished. All this at the will of the legislature. The 'property of the school district' is a phrase which is misleading. The district owns no property, all school facilities, such as grounds, buildings, equipment, etc., being in fact and law the property of the State and subject to the legislative will. A school district has no such property right of which it might be deprived in violation of section 2 of article II of the State constitution. (People v. Deatherage, 401 Ill. 25, 91 N.E. 2d 581.) Section 4B-6 provides a complete,



clear, and certain procedure for detaching territory from any school district and annexing it to an existing adjacent community unit school district. The constitutional objection urged by plaintiffs is not well taken." (People ex rel. Dixon v. Community School District, 2 Ill. 2d 454, pp. 465-466, 118 N.E. 2d 241, 246.)

Accordingly, we hold that Public Act 77-604 is not unconstitutional and that this court as well as the circuit court was without jurisdiction upon administrative review. The motion to vacate the order dismissing this appeal accordingly is denied.

SIMKINS, J., concurs.

TRAPP, P. J., dissents.

TRAPP, Presiding Justice (dissenting):

In granting administrative review to petitioners but denying such to objectors, this statute violates the equal protection and due process provisions of the Illinois and United States Constitutions.

In Hecker v. I.C.R.R. Co., 231 Ill. 564, 83 N.E. 456, the Supreme Court examined the provisions of the Civil Practice Act concerning appeals from the Appellate Court and held that it was unconstitutional as to the provision which granted appellee an appeal to the Supreme Court but denied such appeal to an appellant. It was said that the legislature cannot allow an appeal to one party from an adverse decision and deny it to another.

In Funkhouser v. Randolph, 287 Ill. 94, 122 N.E. 144, a statute authorizing organization to a special drainage district included a provision that a court's finding that the district should be organized was conclusive as to objectors but was not conclusive upon the petitioners if the findings

were against them. Holding the provision void, the court said:

> "The restrictions on such appeal or writ of error on the review of the facts found are only against the defendants in case the finding is against them. Unilateral restrictions of this character on the right of review are repugnant to the constitutional provisions guaranteeing every person equal protection of the law. Every citizen has a right, under such guaranties, to insist that his rights of life, liberty, and property shall be determined by the same rules which settle and determine similar rights of others."

We can perceive no distinction by reason of the form of judicial review provided in the statute.

To meet the standards of equal protection, the statutory distinctions drawn must have some relevance to a purpose of reasonable classification. (Rinaldi v. Yeager, 384 U.S. 305, 86 S.Ct. 1497, 16 L.Ed. 2d 577.) In Lindsey v. Normet, 405 U.S. 56, 92 S.Ct. 862, 31 L.Ed. 2d 36, an Oregon statute upon forcible entry and detainers required that a tenant who wished to appeal an adverse judgment must post bond in twice the amount of rent due and forfeit the entire amount if the judgment was affirmed. It was held that such provision had no reasonable relationship to any valid state objective and violated due process. In North Carolina v. Pearce, 395 U.S. 711, 89 S.Ct. 2072, 23 L.Ed. 2d 656, it was said that if appellate review is established, it must be free of unreasoned distinctions that can only impede open and equal access to the courts.

In People v. Sholem, 238 Ill. 203, 87 N.E. 390, the statute did not provide for an appeal by the attorney general from an order of a county judge assessing the inheritance tax. The court said:

> "A statute which was so framed that literally it is only available to one of the parties to review the proceedings should be so construed as to extend to the other party the same means for the correction of errors. The right to review should be held reciprocal and alike demandable by either party. (citation omitted) The Legislature has the power to regulate appeals and writs of error, but in so doing it has no right to discriminate between the parties and allow to one party an appeal from an adverse decision and not allow it upon equal terms to the other (citation omitted). If the Legislature intended the provision in section 11 to permit an appeal only by the persons interested in the property of the estate assessed, then that provision, under these authorities, would be unconstitutional."



If the Legislature, by this statute, intended that administrative review should be available only to petitioners, upon these authorities the statutory provision is unconstitutional.

The cited Mills' Prairie opinion did not undertake to consider the issue of constitutionality raised here. Again, the principal opinion has not undertaken to discover any rational, relevant or reasonable basis for distinguishing between petitioners and objectors for purposes of administrative review.

The motion to vacate the order of dismissal should be granted.

## APPENDIX C

## MEMORANDUM OPINION OF TRIAL COURT SETTING ASIDE ADMINISTRATOR'S ORDER AS CONTRARY TO MANIFEST WEIGHT OF THE EVIDENCE

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**IN THE CIRCUIT COURT**
**VERMILION COUNTY, ILLINOIS**

| | |
|---|---|
| Board of Education of Armstrong High School District No. 225, Counties of Vermilion and Champaign County, and State of Illinois, | |
| vs. | |
| James H. Ellis, Superintendent of Educational Service Region, Vermilion County, Illinois, otherwise known as County Superintendent of Schools, Vermilion County, Illinois, et al. | No. 71-MR-160 |

Filed January 5, 1973.

### MEMORANDUM OPINION

HARRY I. HANNAH, Judge.

Pursuant to a petition filed by over 200 voters of a given district described in the petition and consisting of a compact and contiguous territory, no part thereof being part of any community unit school district, it was sought to establish a community unit school district pursuant to the School Code, Chap. 122, Sec. 11-6. Objections were filed to the petition.

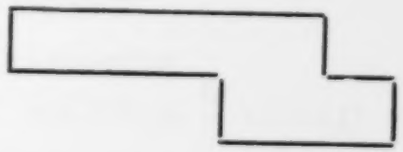
A hearing was called and held by the Superintendent of Educational Service Region, pursuant to which said Super-

intendent found in favor of the petitioners and ordered an election.

From this decision the objectors petitioned for a judicial review, which is now before this Court. The power of the Court upon a petition to review an administrative order is a limited one, but none-the-less vital to the protection of vital rights of those involved.

Before passing upon this question we wish to observe that any apparent delay in this hearing was due to the suggestion of counsel who advised that the Court would be advised when it was desired that the hearing proceed.

The territory described and sought to be included in the new proposed unit district is compact and contiguous, but to visualize the territory included it is necessary to observe it upon a map, and this is important. The proposed unit school district incorporates (1) all of Oakwood Township High School District No. 227, which incorporates Fithian Community Consolidated School District No. 175, and Muncie Consolidated School District No. 190, and (2) a small irregular shaped tract off the southeast corner of the Armstrong Consolidated School District No. 61, and contains 1600 acres.



This tract is located approximately at the center of Newtown Consolidated District 109 (grade school). Upon this small tract is located the Vermilion Power Plant and the Newtown District's sole and only school facility, grade school building. In square miles it consists of 1¾ square miles only.

Otherwise the proposed new Community Unit School District consists of Oakwood Township High School District No. 227 and this small 1600 acre tract. Included in the Oakwood Township High School District are the following grade school districts, viz.: Fithian, No. 125, Muncie, No. 120, Oakwood, No. 132, Diamond, No. 135, and the southern or lower one-half of Newtown No. 109.



Joining on the northern boundary line of the proposed new unit district lies the Armstrong Township High School District 225.

Measured in square miles we find:

1. Oakwood High School District has 89 13/16 square miles.
2. Armstrong High School District has 137 square miles.
   a. 85 square miles in Vermilion County.
   b. 55 9/16 square miles in Champaign County.
3. Newtown District 109 has 55 9/16 square miles.
   a. 32 square miles in Armstrong High School District.
   b. 23 9/16 square miles in Oakwood High School District.

The proposed new unit district contains 91 9/16 square miles.

It is stipulated by the parties that the 1600 acres in question, and on which is located the Power Plant and Newtown District's only school building is located in the Newtown District, and outside of Oakwood High School District and in Armstrong High School District. It is further stipulated that this 1600 acre tract "is in the Newtown District at the assessed value of $9,024,920.00"; and "that the assessed value of Newtown District within the present Oakwood High School boundaries is $3,826,735.00, and that the assessed valuation of the property remaining in the Newtown District, should this petition be granted, would be $3,665,225.00".

It is also stipulated (Ex. "A") that the assessed valuation of Armstrong High School District is $32,176,805.00, with a bonded indebtedness of $265,000.00. If this petition be allowed then its assessed valuation will be reduced to $23,151,885.00, due to the loss of the 1600 acre tract.

Accordingly, it appears that should this petition be granted, this remaining portion of Newtown District 109 would have an assessed valuation of only $3,665,225.00 from which to finance a school system and build an adequate school building, which they *must* do, if they operate as a school district, because the proposed Unit Community School District absorbs the only school facility, it being located on the 1600 acre tract in question.

It is admitted that presently there are 59 children in this portion of Newtown District which is not included in the proposed unit district.

It is admitted that this 1600 acre tract is the most valuable area in this total area. As stated heretofore it contains the Vermilion Power Plant, and its assessed valuation is very high. It is situated in both the Armstrong High School District and the Newtown School District. Thus, it is, that both these districts seek to retain it. It is an important factor in financing the educational program of both these districts (Armstrong and Newtown).

As to the remaining portion of the Newtown District, not included in the proposed Unit District, it obviously will render it impossible for it to set up and equip and finance itself as a new district. The proposed Unit District takes away all the facilities that heretofore served it. There remain 59 students in this area who will have no place in their district to go for their basic education. As heretofore stated it would appear they do not have sufficient remaining assessed valuation with which to provide their



bare requirements. Their only recourse, it would appear, would be to seek annexation to some other adjoining district or become tuition students at another school.

At this point we should note who were the proponents or who initiated this petition. It appears it consisted of Oakwood Township High School District and all grade schools within its area except Newtown Consolidated School District No. 109. The latter, District 109, together with Armstrong Consolidated School District No. 61, it appears has filed its petition for the creation of a Consolidated Unit School District. But no hearing has been had, and what its proposed boundaries are does not appear. But Newtown No. 109 refused to join in this petition, but a portion of its area, including its school facilities, are sought to be forced into the proposed Unit District. Ironically, if this petition be allowed, the voters and taxpayers in the *excluded* area will not be permitted to vote, and they will have no voice in the division of their school district.

In this connection, it should be observed that the school building (located on the 1600 acre tract) serving the whole District No. 109, was built in 1957, and was built at the expense of the *entire* District 109. The district was bonded in the amount of $125,000.00. This is spread over the entire district area. If this petition be granted and carried, then the excluded area will continue liable for its proportionate share of the bonded indebtedness. The included area's share will be spread over the entire area of the proposed new unit district. Thus, those in the *included* area will have their share "watered" down by having it spread over the entire area of the new unit. Counsel has described this as their "windfall". But as to the taxpayers in the *excluded* area, they are losing what they originally purchased, namely, the school facilities. So they now must in addition to paying for that which they do not get, they must pay

for new school facilities, if they are to continue as a school district. All this is forced upon them without giving them any voice. In the words of a famous comedian, "It just don't seem right." While the manner of apportioning the bond issue is determined by Statute and is not a matter for the determination of this Court, yet it is a factor to weigh in connection with all other evidence, in determining whether or not the equities are such, as relating to the entire area affected, as to render the decision of the Administrative officer in keeping with the total evidence.

Without quoting, we call attention to the statement of witness Doyle Collins, made at the hearing, in behalf of the Newtown Consolidated School District 109, and speaking as a member of the Board of School Directors of Newtown 109. The statement seems to set forth very cogent reasoning upon the part of that District.

This being an Administrative Review, the Court is limited to determining if the record can be construed as supporting the administrative order, or if the order is contrary to the manifest weight of the evidence. The Court cannot modify the order or substitute its opinion for the order entered. This proceeding is based upon the provisions of Section 11-6 of the School Code. It is basic that every child shall be provided a free and equal opportunity for an education. The obligation of providing this opportunity rests primarily with the Legislature, and they have prescribed, by law, methods whereby this may be accomplished. These rules, by necessity, must be somewhat general, in other words there cannot be a separate rule for every individual case. Thus it is that it is largely left to the citizens of each district or area, or group of districts or areas, to bring themselves within the compass of the rules to the end that education may be best promoted. Such was the hope and intention of the Legislature, and purpose



of the School Code. However occasions arise when it is sought to bend the rule to accommodate certain districts, areas or individuals, and to the detriment of others. So here the question presented is whether the rule is being bent or abused for the benefit of certain districts or areas to the unjustifiable injury of others.

One of the basic considerations in a case such as this is "the welfare of the affected districts *as a whole*. Is it for the best interests of the people and pupils in *the entire area*, as well as that of the particular districts involved. 33 I.P.I. Sec. 68. Where it is sought to change the geographical contents of the districts or area, it is important to consider whether any district or portion thereof is being put in jeopardy of losing its educational resources. If detaching territory from a district in fact jeopardizes the losing district, then that becomes a substantial and significant basis for denying the petition. 33 I.P.I. Sec. 68. Richmond v. County Bd., 93 Ill. App. (2) 142."

It is to be noted that Newtown District No. 109 was not one of the petitioners. On the contrary it opposed the petition, but faces, against it will, the possibility of losing about one-half of its territory, plus the most valuable part of its taxable property (the 1600 acres) plus its school facilities. No one can deny that it will suffer an immeasurable loss — one that renders it impossible to operate a school for its students, now numbering 59. They may have another source of education available, but the burden is placed upon them, and unnecessarily so. No attempt is made to explain why the north half of District 109 was not included in the proposed consolidated Unit District. The Court can find no semblance of a reason for this exclusion of the upper half of Newtown 109.

Then there was the inclusion in the proposed new district

of the small 1600 acre tract out of the corner of the Armstrong High School District and Newtown District 109. Why? We do not know, except for the apparent reason of obtaining the additional tax support from this valuable area, the increased assessed valuation by reason of the Vermilion Power Plant, and counsel could offer no other reason. It not only contains the only Newtown 109 school building, but is so located as to be of little value to the proposed Unit District. This action partakes of the character of gerrymandering. This is at the expense of Armstrong High School District, and to the definite injury of its educational program. It reduced Armstrong's assessed valuation from $32,176,805.00 to $23,151,885.00. It renders the excluded area of Newtown District 109 helpless as a school district.

While not directly applicable to this proceeding, we believe Section 7-2 of the Code illustrates the impropriety of the attempted detachment of a portion of the Newtown District in this proceeding, and where the only school facility in this District is included in the detached portion. Here the detachment is sought to be forced upon the District and against its will, and in essence to the deprivation of the remaining district of its educational facilities for which it must still pay, and leaving it financially unable to replace. All this, *so far as this record discloses,* is without any semblance of justification.

While this Court realizes the limitations placed upon it under the Administrative Review Act, it also appreciates the responsibility resting upon it. Where it appears that the record does not support the administrative determination, where it is obvious that the administrative determination is contrary to the manifest weight of the evidence, it becomes the duty of the Court to set aside the order. In considering this sufficiency of this record we are not and



should not be limited to the consideration of what might be good for the particular proposed district area, but rather, what will be the effect of granting of this petition upon *the entire area* involved? Here we feel that the apparent injury to the excluded area of the Newtown Consolidated School District No. 109, and to the impairment of the Armstrong High School District by the resulting financial loss to it, is of such magnitude that it requires the setting aside of the Administrative order, and that the Administrative order is contrary to the manifest weight of the evidence.

Accordingly, the Administrative order of the Superintendent of the Educational Service Region of Vermilion County is hereby set aside.

HARRY I. HANNAH, Judge.

## APPENDIX D

## JUDGMENT ORDER OF COURT BELOW DISMISSING COMPLAINT

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**IN THE**
**SUPREME COURT OF THE STATE OF ILLINOIS**

**No. 46837**

| | |
|---|---|
| Board of Education of Armstrong High School District #225, et al., Appellants<br>vs.<br>James H. Ellis, Superintendent of Education Service Region, Vermilion County, Illinois, et al., Appellees | Appeal from Appellate Court Fourth District 12205 71 MR 160 |

Entered March 24, 1975.

And now, on this day, this cause having been argued by counsel, and the Court, having diligently examined and inspected as well the record and proceedings aforesaid, as the matters and things therein assigned for error, and now, being sufficiently advised of and concerning the premises, are of the opinion that in the record and proceedings aforesaid, and in the rendition of the judgments aforesaid, there is manifest error.

THEREFORE, it is considered by the Court that for that error and others in the record and proceedings aforesaid the judgments of the Appellate Court of the Fourth District and the Circuit Court of Vermilion County in this behalf rendered, BE REVERSED, ANNULLED, SET ASIDE AND WHOLLY FOR NOTHING ESTEEMED,

and this cause be remanded to the Circuit Court of Vermilion County with directions to dismiss the complaint.

And it is further considered by the court that the said appellants recover of and from the said appellees costs by them in this behalf expended, to be taxed in due course of law.



## APPENDIX E

## ORDER OF COURT BELOW DENYING PETITION FOR REHEARING

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**IN THE**
**SUPREME COURT OF THE STATE OF ILLINOIS**

**No. 46837**

Board of Education of Armstrong High School District #225, et al., Appellants

vs.

James H. Ellis, Superintendent of Education Service Region, Vermilion County, Illinois, et al., Appellees

Appeal from Appellate Court Fourth District 12205 71 MR 160

Entered May 29, 1975.

And now, on this day, the Court having duly considered the petition for rehearing filed herein, and being now fully advised of and concerning the premises, doth overrule the prayer of the petition and denies a rehearing in this cause.

## APPENDIX F

## NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

Filed June 10, 1975, in the office of Clell L. Woods, Clerk of the Supreme Court of the State of Illinois.

## IN THE SUPREME COURT OF THE STATE OF ILLINOIS

| | |
|---|---|
| Board of Education of Armstrong High School District #225, et al., Plaintiffs-Appellants, vs. James H. Ellis, Superintendent of Education Service Region, Vermilion County, Illinois, et al., Defendants-Appellees. | No. 46837 |

### NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

NOTICE IS HEREBY GIVEN That Board of Education of Armstrong High School District No. 225, Counties of Vermilion and Champaign and State of Illinois; and Marvin E. Poyner, Bernice M. Poyner, Ruth David, Palmer Tarter, Mrs. Mary Ann Vinson, Mrs. Sarah E. Cook, Mrs. Daisy Selsor, Marjori Ashcraft, Goldie Acton, H. L. Wise, Rosella J. Wise, Virlon Juvinall, Robert W. Davis, Olive M. Davis, Hazle E. Davis, Norma E. Landers, James Landers, Kathy Davis, Elizabeth Hayn, Grace C. Abbott, Ronald E. McElhoe, Mrs. Alice Powell, Olga B. Juvinall, Edwin C. King, Helen King, Abbie W. Acton, Buford Acton, Flossie Acton, Paula Davis, John R. Davis, Bernice Davis, Andy Hayn, Elfie Tarter, Howard Abbott, Russell Barker,

Mrs. Betty F. Barker, Mrs. Peggy J. Connor, Fred W. Connor, Sr., Robert Chesnut, Lois Chesnut, Elsie Chesnut, Mark Chesnut, Lois West, Donna Good, Dorothy E. Mattis, W. R. Schmit, Sharon Schmit, Leo G. Bloomfield, Rita Curry, Judith A. Divan, A. Lomax, Given Lomax, Patricia J. Shank, Laura M. Lomax, John D. Lomax, Shirley M. Lomax, Eileen Fox, Carole J. Albert, John D. Albert, Rose Curry, Davey Curry, Peggy J. Graves, Deloris L. Ellis, Brenda Anderson, Paula Pricer, Robert Pricer, Barbara J. Lomance, Walter D. Lee, Cora Divan, Floyd Nelson, Beverly Nelson, Glen Fletcher, Wilma Mayhew, Ernest L. Mayhew, Mrs. Billie Beninati, Frank Stingley, Jr., Helen Stingley, Johnnie King, Betty King, Ruth King, Charles Acton, Charlotte Acton, Jack Ludwig, Wilma Ludwig, Thomas E. King, Betty Tucker, Earl Tucker, Randee Clingan, Ethel Davis, Donald Davis, Ron Knight, Russell E. Roberts, Norma Knight, Paul Knight, Dale Miles, Alice Miles, Ruth Kinney, Lawrence Goodhue, Carolyn Goodhue, Harold Long, D. Ralph Kinney, Carole S. Smith, Judy Laflen, Lucille M. Laflen, Vera Wise, Albert Wise, Bernice Lee, John Beninati, Mary Calvert, Sharon L. Curry, Carol Carnahan, Abbie Hazelbaker, Barbara Long, Jo Ann Goodner, Mary J. Bloomfield, Jim Bloomfield, Mrs. Jane Bloyd, Mrs. Floyd J. Turner, Floyd J. Turner, Mrs. Julia Dodson, Bart Snyder, Helen Snyder, Marilyn Parrish, Raymond Parrish, Betty Coffing, Hugh Coakley, Ronald W. Camp, Virginia A. Camp, James S. Clingan, Diane M. Acton, James C. Greer, Eileen E. Greer, Diana K. Parrish, Rodney D. Parrish, Cecile I. Ludwig, Greta R. Ludwig, Paul S. Ludwig, Eva M. Chitwood, Ray Chitwood, Charles W. Laflen, William H. Dearth, Mary Severs, Ruth Roberts, Walter R. Pribble, Anna L. Pribble, Milford Pribble, Patricia F. Colby, Robert D. Colby, Laverne Gill, Mary E. Bloomfield, M. Marlene Pichon, Helen Cundiff, Mae A. Black, Frederick W. Black, Larry L. Dines, Clyde West,



Jr., Phyllis McElhoe, Oretha Coakley and Harry Ashcraft, the Plaintiffs-Appellants above named, hereby appeal to the Supreme Court of the United States from the Final Judgment of the Supreme Court of the State of Illinois reversing the judgments of the Appellate Court of the Fourth District of Illinois and the Circuit Court of Vermilion County, Illinois, and remanding said cause to the Circuit Court of Vermilion County, Illinois, with directions to dismiss the Complaint, said Final Judgment having been entered in this action on the 24th day of March, 1975, and Plaintiffs-Appellants' Petition for Rehearing in said action having been denied by the Supreme Court of the State of Illinois on the 29th day of May, 1975.

This appeal is taken pursuant to 28 U.S. Code, Section 1257 (2).

Harvey H. Acton
Thomas B. Meyer
Attorneys for Plaintiffs-Appellants
Address: 106 North Vermilion Street
Danville, Illinois 61832

## APPENDIX G

**ILLINOIS PUBLIC ACT 77-604, effective 7/31/71**
**(3 Ill. Rev. Stats., 1971, Ch. 122, sec. 11-6)**

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**PUBLIC ACT 77-604**

HOUSE BILL 2654.

**An Act to amend Section 11-6 of "The School Code", approved March 18, 1961, as amended.**

*Be it enacted by the People of the State of Illinois, represented in the General Assembly:*

Section 1. Section 11-6 of "The School Code", approved March 18, 1961, as amended, is amended to read as follows:

**Sec. 11-6. [S.H.A. ch. 122, § 11-6] Organization authorized — Petitions — Notice of election**

Any contiguous and compact territory, no part of which is included within any community unit school district, or other unit district, having a population of not less than 4,000 and not more than 500,000 persons and an equalized assessed valuation of not less than $12,000,000 may be organized into a community unit school district as provided in this Article; the territory of 2 or more entire community unit school districts that are contiguous to each other and the territory of which taken as a whole is compact may be organized into a community unit school district as provided in this Article; the territory of one or more entire community unit school districts that are contiguous to each other plus any contiguous and compact territory, no part of which is included within any community unit school district or other unit district, and the territory of which taken as a whole is compact may be organized into a com-

munity unit school district as provided in this Article; or any contiguous and compact territory, no part of which is included within any community unit school district or other unit district, having a population of not less than 1500 and not more than 500,000 persons and an equalized assessed valuation of not less than $10,000,000 may be organized into a community unit school district as provided in this Article, if the special procedure later set forth in this Section for a district below 4,000 population is followed by the Superintendent of Public Instruction and the superintendent of an educational service region containing the greater percent of the assessed valuation of the proposed district than is contained in any other region in which assessed valuation of the proposed district is situated.

A petition shall be filed with the regional superintendent of the region containing the greater percent of the assessed valuation of the proposed district than is contained in any other region in which assessed valuation of the proposed district is situated, signed by 200 or more voters residing within the territory and giving their respective addresses and the school district in which they reside. The petition shall: (1) request the calling of an election for the purpose of voting for or against the establishment of a community unit school district in the territory; (2) describe the territory comprising the proposed district; (3) state whether any school district the territory of which is included in the proposed community unit school district has established and is maintaining and operating a junior college; (4) contain signatures of legal voters from at least ¾ of the school districts or parts of districts in the territory included in the petition; (5) designate a committee of 10 of the petitioners as attorney in fact for all petitioners, any 7 of whom may make binding stipulations on behalf of all petitioners as to any question with respect to the petition or hearing



and the regional superintendent may accept such stipulation instead of evidence or proof of the matter stipulated, which committee of petitioners may stipulate to accountings or waiver thereof between school districts; however, the regional superintendent may refuse to accept such stipulation; (6) set forth the maximum tax rates for educational and building purposes the proposed district shall be authorized to levy upon all the taxable property of the district, which rates may not exceed the combined existing maximum tax rates for educational purposes of any high school district and any elementary school district included in the territory of the proposed district, or 2% of the value, as equalized or assessed by the Department of Local Government Affairs, for educational purposes, whichever is greater, and the combined existing maximum tax rates for building purposes and the purchase of school grounds of any high school district and any elementary school district included in the territory of the proposed district or .375% for building purposes and the purchase of school grounds, whichever is greater. The petition may also request that the election called for the purpose of voting for or against the establishment of a community unit school district in the territory include a proposition authorizing the issuance of bonds by the district when organized, in accordance with this Act. The principal amount of the bonds and the purpose of issuance shall be stated in such petition and in all notices and propositions submitted thereunder. Upon receipt of such a petition, the regional superintendent shall cause notice of the presentation of such petition to be given by publishing a notice thereof at least once each week for 3 successive weeks in at least one newspaper having general circulation within the area of the territory of the proposed district. The notice shall state when and to whom the petition was presented, the description of the territory of the

proposed district, and if requested in the petition a statement of the proposition to issue bonds and indicating the amount and purpose thereof, and the day on which the hearing upon the petition will be held. On such day or on a day to which the regional superintendent continues the hearing, the regional superintendent shall hear the petition and determine the sufficiency thereof as prescribed in this Section and may adjourn the hearing from time to time or continue the matter for want of sufficient notice or for other good cause. The regional superintendent shall hear evidence as to the school needs and conditions of the territory and in the area within and adjacent thereto and take into consideration the division of funds and assets which will result from the organization of the district, shall determine whether it is for the best interests of the schools of the area and the educational welfare of the pupils therein that such district be organized, and shall determine whether the territory described in the petition is compact and contiguous for school purposes.

At the hearing, any resident in the proposed district or any district affected thereby may appear in support of the petition or to object thereto. Within 14 days after the conclusion of the hearing the regional superintendent shall make a decision either approving or denying the petition. If the regional superintendent denies the petition no election shall be held or further proceedings had unless his decision is reversed upon review. If the regional superintendent approves the petition he shall submit the petition and any evidence that is pertinent to the petition to the Superintendent of Public Instruction for review. The Superintendent of Public Instruction must approve or deny the petition within 30 days. If the Superintendent of Public Instruction denies the petition the reasons for such denial shall be communicated to appropriate groups, agencies or



instrumentalities representing the petitioners and no election shall be held. If the Superintendent of Public Instruction approves the petition the regional superintendent shall call an election to be held in the manner provided in Article 9 of this Act at least 40 days after such approval for the purpose of voting for or against the proposition of establishing a community unit school district to maintain grades 1 through 12, or grades 1 through 14 as the case may be, establishing tax rates therefor, and if requested in the petition, for issuing bonds. The ballot shall conform as nearly as practicable to the form prescribed in Section 11-2 of this Act. If the petition requests the submission of a proposition for the issuance of bonds such question shall be incorporated in the proposition to be voted on. A decision of the regional superintendent denying the petition is an "administrative decision" as defined in Section 1 of the "Administrative Review Act", and any petitioner or resident who appears in support of the petition at the hearing may apply for a review of such decision in accordance with the "Administrative Review Act" and all amendments and modifications thereof and the rules adopted pursuant thereto. Whenever an election is permissible or required under this Section, the regional superintendent shall publish notice of the election at least 10 days before the date of the election at least once in one or more newspapers having general circulation within the territory, which may be in substantially the form provided in Section 11-1.

Any community unit school district organized before August 6, 1965 may increase its tax levy for educational purposes and building purposes, without referendum, to the maximum limits established for districts maintaining grades 1 through 12 in Section 17-2 of the School Code and subject to Section 17-2.2 thereof.

## APPENDIX H

**ILLINOIS PUBLIC ACT 76-2269, effective 7/1/70**
**(1970 Supp., Ill. Rev. Stats., 1969, Ch. 122, sec. 11-6)**

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**PUBLIC ACT 76-2269**

**An Act to amend Section 11-6 of "The School Code", approved March 18, 1961, as amended.**

*Be it enacted by the People of the State of Illinois, represented in the General Assembly:*

Section 1. Section 11-6 of "The School Code", approved March 18, 1961, as amended, is amended to read as follows:

**Sec. 11-6. Organization authorized — Petitions — Notice of election.**

Any contiguous and compact territory, no part of which is included within any community unit school district, or other unit district, having a population of not less than 4,000 and not more than 500,000 persons and an equalized assessed valuation of not less than $12,000,000 may be organized into a community unit school district as provided in this Article; the territory of 2 or more entire community unit school districts that are contiguous to each other and the territory of which taken as a whole is compact may be organized into a community unit school district as provided in this Article; the territory of one or more entire community unit school districts that are contiguous to each other plus any contiguous and compact territory, no part of which is included within any community unit school district or other unit district, and the territory of which taken as a whole is compact may be organized into a community unit school district as provided in this Article;

or any contiguous and compact territory, no part of which is included within any community unit school district or other unit district, having a population of not less than 1500 and not more than 500,000 persons and an equalized assessed valuation of not less than $10,000,000 may be organized into a community unit school district as provided in this Article, if the special procedure later set forth in this Section for a district below 4,000 population is followed by the Superintendent of Public Instruction and the county superintendent of schools of the county containing the greater percent of the assessed valuation of the proposed district than is contained in any other county in which assessed valuation of the proposed district is situated.

A petition shall be filed with the county superintendent of schools of the county containing the greater percent of the assessed valuation of the proposed district than is contained in any other county in which assessed valuation of the proposed district is situated, signed by 200 or more voters residing within the territory and giving their respective addresses and the school district in which they reside. The petition shall: (1) request the calling of an election for the purpose of voting for or against the establishment of a community unit school district in the territory; (2) describe the territory comprising the proposed district; (3) state whether any school district the territory of which is included in the proposed community unit school district has established and is maintaining and operating a junior college; (4) contain signatures of legal voters from at least ¾ of the school districts or parts of districts in the territory included in the petition; (5) designate a committee of 10 of the petitioners as attorney in fact for all petitioners, any 7 of whom may make binding stipulations on behalf of all petitioners as to any question with respect to the petition or hearing and the county superintendent of schools may accept such stipulation in lieu of evidence or proof of the



matter stipulated, which committee of petitioners may stipulate to accountings or waiver thereof between school districts; however, the county superintendent of schools may refuse to accept such stipulation; (6) set forth the maximum tax rates for educational and building purposes the proposed district shall be authorized to levy upon all the taxable property of the district, which rates may not exceed the combined existing maximum tax rates for educational purposes of any high school district and any elementary school district included in the territory of the proposed district, or 2% of the value, as equalized or assessed by the Department of Revenue, for educational purposes, whichever is greater, and the combined existing maximum tax rates for building purposes and the purchase of school grounds of any high school district and any elementary school district included in the territory of the proposed district or .375% for building purposes and the purchase of school grounds, whichever is greater. The petition may also request that the election called for the purpose of voting for or against the establishment of a community unit school district in the territory include a proposition authorizing the issuance of bonds by the district when organized, in accordance with this Act. The principal amount of the bonds and the purpose of issuance shall be stated in such petition and in all notices and propositions submitted thereunder. Upon receipt of such a petition, the county superintendent of schools shall cause notice of the presentation of such petition to be given by publishing a notice thereof at least once each week for 3 successive weeks in at least one newspaper having general circulation within the area of the territory of the proposed district. The notice shall state when and to whom the petition was presented, the description of the territory of the proposed district, and if requested in the petition a statement of the proposition to issue bonds and indicating the amount and

purpose thereof, and the day on which the hearing upon the petition will be held. On such day or on a day to which the county superintendent continues the hearing, the county superintendent shall hear the petition and determine the sufficiency thereof as herein prescribed and may adjourn the hearing from time to time or continue the matter for want of sufficient notice or for other good cause. The county superintendent shall hear evidence as to the school needs and conditions of the territory and in the area within and adjacent thereto and take into consideration the division of funds and assets which will result from the organization of the district, shall determine whether it is for the best interests of the schools of the area and the educational welfare of the pupils therein that such district be organized, and shall determine whether the territory described in the petition is compact and contiguous for school purposes.

At the hearing, any resident in the proposed district or any district affected thereby may appear in support of the petition or to object thereto. At the conclusion of the hearing the county superintendent shall make a decision either granting or denying the petition. If the county superintendent denies the petition no election shall be held or further proceedings had unless his decision is reversed upon review. If the county superintendent approves the petition he shall call an election to be held in the manner provided in Article 9 of this Act at least 40 days after such approval for the purpose of voting for or against the proposition of establishing a community unit school district to maintain grades 1 through 12, or grades 1 through 14 as the case may be, establishing tax rates therefor, and if requested in the petition, for issuing bonds. However, prior to calling any such election for organizing any such proposed district that does not have 4,000 or more population, the county superintendent of schools shall transmit to the Superintendent



of Public Instruction a notice of the petition whereupon the Superintendent of Public Instruction shall prepare the notification or report indicating whether or not he deems it possible for the proposed district to provide a recognized school program for a 12-grade district under conditions set forth in that Section. The county superintendent shall cause a copy of such report to be published as provided in that Section. The ballot shall conform as nearly as practicable to the form prescribed in Section 11-2 of this Act. If the petition requests the submission of a proposition for the issuance of bonds such question shall be incorporated in the proposition to be voted on. The decision of the county superintendent is an "administrative decision" as defined in Section 1 of the "Administrative Review Act", and any petitioner or resident who appears at the hearing may apply for a review of such decision in accordance with the "Administrative Review Act" and all amendments and modifications thereof and the rules adopted pursuant thereto. The commencement of any action for review shall operate as a supersedeas, and no election shall be held pending final disposition of such review. Whenever an election is permissible or required under this Section, the county superintendent shall publish notice of the election at least 10 days prior to the date of the election at least once in one or more newspapers having general circulation within the territory, which may be in substantially the form provided in Section 11-1.

Any community unit school district organized before August 5, 1965 may increase its tax levy for educational purposes and building purposes, without referendum, to the maximum limits established for districts maintaining grades 1 through 12 in Section 17-2 of the School Code and subject to Section 17-2.2 thereof.

## APPENDIX I

**ILLINOIS PUBLIC ACT 78-732, effective 10/1/73**
**(Ill. Rev. Stats., 1973, Ch. 122, sec. 11-6)**

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**PUBLIC ACT 78-732**

**An Act to amend Section 11-6 of "The School Code", approved March 18, 1961, as amended.**

*Be it enacted by the People of the State of Illinois, represented in the General Assembly:*

Section 1. Section 11-6 of "The School Code", approved March 18, 1961, as amended, is amended to read as follows:

**11—6. § 11-6. Organization of community unit districts. (a) Territorial requirements.** (1) Any contiguous and compact territory, no part of which is included within any community unit school district, or other unit district, having a population of not less than 4,000 and not more than 500,000 persons and an equalized assessed valuation of not less than $12,000,000 may be organized into a community unit school district as provided in this Article; (2) the territory of 2 or more entire community unit school districts that are contiguous to each other and the territory of which taken as a whole is compact may be organized into a community unit school district as provided in this Article; or (3) the territory of one or more entire community unit school districts that are contiguous to each other plus any contiguous and compact territory, no part of which is included within any community unit school district or other unit district, and the territory of which taken as a whole is compact may be organized into a community unit school district as provided in this Article.

The regional superintendent shall not accept for filing hereunder any petition which includes therein any territory already included as part of the territory described in another petition filed hereunder. Hearings on a petition filed hereunder shall not be commenced so long as any part of the territory described therein shall include territory described, whether by amendment or otherwise, in another petition filed hereunder.

**(b) Petition.** A petition shall be filed with the regional superintendent of the region containing the greater percent of the assessed valuation of the proposed district than is contained in any other region in which assessed valuation of the proposed district is situated. The petition shall: (1) be signed by 200 or more voters residing within the territory together with each such voter's respective address and the school district in which such voter resides; (2) request the calling of an election for the purpose of voting for or against the establishment of a community unit school district in the territory; (3) describe the territory comprising the proposed district; (4) state the numbers and the approved maximum educational and building tax rates of each of the school districts or parts of districts to be included in the proposed community unit school district; (5) contain signatures of legal voters from at least ¾ of the school districts or parts of districts and residing in the territory included in the petition; (6) designate a committee of 10 of the petitioners as attorney in fact for all petitioners, any 7 of whom may at any time, prior to the final decision of regional superintendent, amend the petition in all respects (except as otherwise provided in this Section as to the territory to be included in the proposed district), and may make binding stipulations on behalf of all petitioners as to any question with respect to the petition or hearing and the regional superintendent may accept such stipulation in-



stead of evidence or proof of the matter stipulated, which committee of petitioners may stipulate to accountings or waiver thereof between school districts; however, the regional superintendent may refuse to accept such stipulation; those designated as the Committee of Ten shall serve in such capacity until such time as the regional superintendent should determine that, because of death, resignation, transfer of residency from the territory, failure to qualify or for any other reason, the office of a particular member or members of the Committee is vacant. Failure of a person designated as a member of the Committee of Ten to sign the petition, whether filed prior or subsequent to the effective date of this Act, shall not disqualify such person as a member thereof and such person may sign the petition at any time prior to final disposition of the petition and the conclusion of the proceeding to form a unit district, including all litigation pertaining to the petition or proceedings. Upon determination by the regional superintendent that such vacancies exist, he shall so declare such vacancies and shall notify the remaining members to appoint a petitioner or petitioners, as the case may be, to fill the vacancies in the Committee of Ten so designated. Such appointment by the Committee of Ten of any such new membership shall be made by a simple majority vote of the designated remaining members. The Committee of Ten shall act, unless otherwise herein specified, by majority vote of the membership. The Committee of Ten may voluntarily dismiss their petition at any time before the final decision of the regional superintendent; (7) set forth the maximum tax rates for educational and operations, building and maintenance purposes that the proposed district shall be authorized to levy upon all the taxable property of the district, which rates may not exceed the combined existing maximum tax rates for educational purposes of any high school district and any elementary school district included in the

territory of the proposed district, or 2% of the value, as equalized or assessed by the Department of Local Government Affairs, for educational purposes, whichever is greater, and the combined existing maximum tax rates for operations, building and maintenance purposes and the purchase of school grounds of any high school district and any elementary school district included in the territory of the proposed district or .375% for operations, building and maintenance purposes and the purchase of school grounds, whichever is greater.

Upon petition being filed, the regional superintendent shall first determine if the petition is in the pleading form as herein required. If the regional superintendent determines that the petition is in proper form he shall then proceed with notice of the presentation or the petition as hereinafter set forth. If he shall determine that the petition does not follow the pleading requirements heretofore set forth, he shall in writing so advise the Committee of Ten, therewith granting to such Committee a reasonable specified time in which to amend the petition so as to bring the same into pleading conformance with the requirements of this Section. If, after the passage of such reasonable time period, or an extension thereof, the Committee should fail to file such required amendments in the office of the regional superintendent, the said petition may be dismissed by the regional superintendent and no hearings shall be held thereon. The pleading requirements for the petition as herein set forth shall not be deemed to be jurisdictional to the legality of the hearings based thereon. Upon the regional superintendent having determined that the petition as filed, or as amended, does conform with the pleading requirements of this Section, he shall then proceed with notice of the presentation of the petition as hereinafter set forth.



The boundaries of the territory described in the petition may be amended by the addition of new territory no part of which is included within any community unit school district or other unit district and no part of which is included in the described territory of a petition filed hereunder wherein a hearing on such petition has commenced, and the boundaries of the territory described in the petition may be amended by the deletion of a portion of such territory. Any such amendment of boundaries may be proposed to the regional superintendent in writing duly signed under oath by ⅔rds of the Committee of Ten members at any time prior to the final decision of the regional superintendent. No such additional territory proposed to be added, or portion of territory proposed to be deleted, shall however increase, or decrease, the area of the territory by more than 25% of the area of the territory as originally described in the petition. Upon presentation of such a request for an alteration of boundaries, the regional superintendent shall grant the same, but only after a legal description of such proposed alteration and a specific map of the same, prepared and certified to by an Illinois Registered land surveyor, is approved by the regional superintendent, the regional superintendent shall not accept any amendment of the boundaries of the territory which would delete a portion of such territory if the effect of the same would be to cause the petition, so amended by such deletion, to not possess the territorial requirements herein set forth and/or the required members of voters' signatures residing in the territory as deleted.

No person signing a petition may withdraw his name from the petition unless he shall do so prior to the commencement of the hearing on the substantive issues. Any person who shall withdraw his name may also reinstate his

name as a petitioner prior to the commencement of the hearing on the substantive issues.

The petition may also request that the election called for the purpose of voting for or against the establishment of a community unit school district in the territory include a proposition on a separate ballot authorizing the issuance of bonds by the district when organized, in accordance with this Act. The principal amount of the bonds and the purpose of issuance shall be stated in such petition and in all notices and propositions submitted thereunder.

**(c) Notice.** Upon receipt of such a petition, the regional superintendent shall cause notice of the presentation of such petition to be given by publishing a notice thereof at least once each week for 3 successive weeks in at least one newspaper having general circulation within the territory of the proposed district. The notice shall state when and to whom the petition was presented, the description of the territory of the proposed district, and if requested in the petition a statement of the proposition to issue bonds and indicating the amount and purpose thereof, and the day on which the hearing upon the petition will be held and the time, place and hours when the petition may be examined and reproduced at the cost of the examining party.

**(d) Hearing-procedural issues.** On such day or on a day to which the regional superintendent continues the hearing, the regional superintendent shall first commence hearing evidence of proof of the territorial requirements as herein set forth and of proof of the required number of voters' signatures being affixed to the petition as herein required. If the preponderance of the evidence presented establishes that such requirements have been proved, the regional superintendent shall enter an Order so declaring, otherwise he shall dismiss the petition setting forth the



lack of such evidence. The regional superintendent may adjourn the hearing from time to time or continue the matter for want of sufficient notice or for other good cause. All objections to the sufficiency of pleading requirements of the petition shall be filed in writing with the regional superintendent no later than 7 days prior to the scheduled hearing, and shall state the reasons therefor. Further amendments to correct any such pleading deficiencies may be ordered by the regional superintendent at any time and he may dismiss the petition if the Committee of Ten should refuse within a specified time period to correct the pleading deficiencies so noted.

**(e) Hearing-substantive issues.** Upon the regional superintendent determining that the petition, as filed, or amended, is sufficient, he shall hear evidence as to the school needs and conditions of the territory and in the area within and adjacent thereto and take into consideration the division of funds and assets which will result from the organization of the district, shall determine whether it is for the best interests of the schools of the area and the educational welfare of the pupils therein that such district be organized.

At the hearing, any resident in the proposed district or any district affected thereby may appear in support of the petition or to object thereto. The regional superintendent may adjourn the hearing as to substantive matters from time to time. Within 14 days after the conclusion of the hearing the regional superintendent shall make a decision either approving or denying the petition. Upon the regional superintendent approving or denying the petition he shall submit the petition and all evidence submitted to the Superintendent of Public Instruction for review. The Superintendent shall, within 30 days after the decision of the regional superintendent, approve or deny the petition according to the following criteria:

(1) He shall review the entire record of the proceedings had before the regional superintendent, including the transcript of said proceedings, and based upon a review of the same shall take into consideration as to:

(a) Whether the proposed district will have sufficient size (pupil enrollment) and financial resources (assessed valuation) to provide and maintain a recognized educational program for grades kindergarten through 12;

(b) whether the proposed school district is for the best interests of the schools of the area and the educational welfare of the pupils therein; and

(c) whether the territory for the proposed school district is compact and continguous for school purposes.

The fact that the pleading requirements of the petition filed with the regional superintendent was not in strict accordance with the provisions of this Act shall not be considered.

If the Superintendent of Public Instruction denies the petition the reasons for such denial shall be communicated to appropriate groups, agencies or instrumentalities representing the petitioners and no election shall be held.

**(e) Election.** If the Superintendent of Public Instruction approves the petition the regional superintendent shall call an election to be held in the manner provided in Article 9 of this Act at least 40 days, but not more than 120 days, after such approval for the purpose of voting for or against the proposition of establishing a community unit school district to maintain grades 1 through 12, establishing tax rates therefor, and if requested in the petition, for issuing bonds.

The ballot shall conform as nearly as practicable to the



form prescribed in Section 11—2 of this Act. If the petition requests the submission of a proposition for the issuance of bonds such question shall be submitted to the voters at such election on a separate ballot. A decision of the regional superintendent or Superintendent of Public Instruction denying or approving the petition, whether made prior or subsequent to the effective date of this Act, shall be a final decision, from which no review or appeal shall be had or taken. However, this amendatory Act of 1973 shall not be construed to affect applications for review which were perfected pursuant to the provisions of the "Administrative Review Act" before the effective date of this Act. Whenever an election is held under this Section the regional superintendent shall publish notice of the election at least 10 days before the date of the election at least once in one or more newspapers having general circulation within the territory, which may be in substantially the form provided in Section 11—1.

Any community unit school district organized before August 5, 1965 may increase its tax levy for educational purposes and operations, building and maintenance purposes, without referendum, to the maximum limits established for districts maintaining grades 1 through 12 in Section 17—2 of the School Code and subject to Section 17—2.2 thereof.

Whenever a community unit school district is established under the provisions of this Act and more than 75% of the territory of such community unit school district is territory which immediately prior to its inclusion in such community unit school district was included in a high school district or districts which was a signatory under the same joint agreement vocational educational project, pursuant to the provisions of this Act, then any such community unit school district shall upon its establishment be deemed

to be a member and signatory to any such joint agreement and shall also have the right to continue to extend any previous authority to levy a tax under Section 17—2.4. In those instances, however, where more than 25% of the territory of any community unit school district was not immediately prior to its establishment included within the territory of any such high school district which was a signatory to the same joint agreement vocational educational program, then any such community unit school shall not be deemed upon its establishment to be a signatory to any such joint agreement nor shall such community unit school district be deemed to have the special tax levy rights under Section 17—2.4 of this Act. Nothing herein shall be deemed to forbid such community unit school district from subsequently joining any such joint agreement vocational education program and to thereafter levy a tax under Section 17—2.4 of this Act by following the provisions of such Section. In the event any such community unit school district should subsequently join any such joint agreement vocational education program, it shall be entitled to a fair credit, as computed by the Office of the Superintendent of Public Instruction, for any capital contributions previously made to such joint agreement vocational education program from taxes levied against the assessed valuation of property situated in any part of the territory included within any such community unit school district.



## APPENDIX J

## ILLINOIS ADMINISTRATIVE REVIEW ACT
**(Ill. Rev. Stats., 1971, Ch. 110, sec. 264 et seq.)**

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AN ACT in relation to judicial review of decisions of administrative agencies. Approved May 8, 1945. L. 1945, p. 1144.

*Be it enacted by the People of the State of Illinois, represented in the General Assembly:*

**264. § 1. (Definitions.)** For the purpose of this Act: "Administrative Agency" means a person, body of persons, group, officer, board, bureau, commission or department (other than a court or judge) of the State, or of any political subdivision thereof or municipal corporation therein, having power under law to make administrative decisions.

"Administrative decision" or "decision" means any decision, order or determination of any administrative agency rendered in a particular case, which affects the legal rights, duties or privileges of parties and which terminates the proceedings before the administrative agency. In all cases in which a statute or a rule of the administrative agency requires or permits an application for a rehearing or other method of administrative review to be filed within a specified time (as distinguished from a statute which permits the application for rehearing or administrative review to be filed at any time before judgment by the Administrative Agency against the applicant or within a specified time after the entry of such judgment), and an application for such rehearing or review is made, no administrative decision of such agency shall be final as to the party applying therefor until such rehearing or review is had or denied.

However, if the particular statute permits an application for rehearing or other method of administrative review to be filed with the administrative agency for an indefinite period of time after the administrative decision has been rendered (such as permitting such application to be filed at any time before judgment by the administrative agency against the applicant or within a specified time after the entry of such judgment), then the authorization for the filing of such application for rehearing or review shall not postpone the time when the administrative decision as to which such application shall be filed would otherwise become final, but the filing of the application for rehearing or review with the administrative agency in this type of case shall constitute the commencement of a new proceeding before such agency, and the decision rendered in order to dispose of such rehearing or other review proceeding shall constitute a new and independent administrative decision. If such new and independent decision consists merely of the denial of the application for rehearing or other method of administrative review, the record upon judicial review of such decision shall be limited to the application for rehearing or other review and the order or decision denying such application and shall not include the record of proceedings had before the rendering of the administrative decision as to which application for rehearing or other administrative review shall have been filed unless the suit for judicial review is commenced within the time in which it would be authorized by this Act to have been commenced if no application for rehearing or other method of administrative review had been filed. On the other hand, if the rehearing or other administrative review is granted by the administrative agency, then the record on judicial review of the resulting administrative decision rendered pursuant to the rehearing or other administrative review may consist



not only of the record of proceedings had before the administrative agency in such rehearing or other administrative review proceeding, but also of the record of proceedings had before such administrative agency prior to its rendering of the administrative decision as to which the rehearing or other administrative review shall have been granted. The term "administrative decision" or "decision" does not mean or include rules, regulations, standards, or statements of policy of general application issued by an administrative agency to implement, interpret, or make specific the legislation enforced or administered by it unless such a rule, regulation, standard or statement of policy is involved in a proceeding before the agency and its applicability or validity is in issue in such proceeding, nor does it mean or include regulations concerning the internal management of the agency not affecting private rights or interests.

Amended by P.A. 77-1277, § 1, eff. Aug. 24, 1971.

**265. § 2. (Scope of Act.)** This Act[1] shall apply to and govern every action to review judicially a final decision of any administrative agency where the Act creating or conferring power on such agency, by express reference, adopts the provisions of this Act. In all such cases, any other statutory, equitable or common law mode of review of decisions of administrative agencies heretofore available shall not be employed after the effective date hereof.

Unless review is sought of an administrative decision within the time and in the manner herein provided, the parties to the proceeding before the administrative agency shall be barred from obtaining judicial review of such administrative decision. If under the terms of the Act governing the procedure before an administrative agency an ad-

[1] Sections 264 — 279 of this chapter.

ministrative decision has become final because of the failure to file any document in the nature of objections, protests, petition for hearing or application for administrative review within the time allowed by such Act, such decision shall not be subject to judicial review hereunder excepting only for the purpose of questioning the jurisdiction of the administrative agency over the person or subject matter.

266. § 3. **(Supreme Court to have power to make rules.)** The Supreme Court of this State shall have the power to make rules of pleading, practice and procedure supplementary to but not inconsistent with the provisions of this Act,[1] and to amend the same, for the purpose of making this Act effective for the convenient administration of justice, and simplifying procedure so far as it affects judicial review of administrative proceedings.

267. § 4. **(Commencement of action.)** Every action to review a final administrative decision shall be commenced by the filing of a complaint and the issuance of summons within 35 days from the date that a copy of the decision sought to be reviewed was served upon the party affected thereby. The method of service of the decision shall be as provided in the Act governing the procedure before the administrative agency, but if no method is provided, a decision shall be deemed to have been served either when personally delivered or when deposited in the United States mail, in a sealed envelope or package, with postage prepaid, addressed to the party affected thereby at his last known residence or place of business.

The form of the summons and the issuance of alias and pluries writs shall be according to rules of the Supreme Court. As amended by act approved Aug. 16, 1963. L.1963, p. 3018.

[1] Sections 264 — 279 of this chapter.



268. § 5. **(Jurisdiction and venue.)** Jurisdiction to review final administrative decisions is vested in the Circuit Courts. If the venue of the action to review a final administrative decision is expressly prescribed in the particular statute under authority of which the decision was made, such venue shall control, but if the venue is not so prescribed, an action to review a final administrative decision may be commenced in the Circuit Court of any county in which (1) any part of the hearing or proceeding culminating in the decision of the administrative agency was held, or (2) any part of the subject matter involved is situated, or (3) any part of the transaction which gave rise to the proceedings before the agency occurred. The court first acquiring jurisdiction of any action to review a final administrative decision shall have and retain jurisdiction of the action until final disposition thereof. As amended by act approved Aug. 9, 1963. L.1963, p. 2687. Effective Jan. 1, 1964.

269. § 6. **(Service of summons.)** Summons issued in any action to review the final administrative decision of any administrative agency shall be served by registered mail on the administrative agency and on each of the other defendants except in the case of a review of a final administrative decision of the county board of school trustees or county superintendent of schools, as the case may be, when a committee of 10 has been designated as provided in Section 7—6 or 11—6 of The School Code,[1] and in such case only the administrative agency involved and each of the committee of 10 shall be served. Such service on the administrative agency shall be made by the clerk of the court by sending a copy of the summons addressed to the agency at its main office in the State. The clerk of the court shall also mail a copy of the summons to each of the other defendants,

[1] Chapter 122, §§ 7—6, 11—6.

addressed to the last known place of residence or principal place of business of each such defendant. The plaintiff shall, by affidavit filed with the complaint, designate the last known address of each defendant upon whom service shall be made. The certificate of the clerk of the court that he has served such summons in pursuance of this Section shall be evidence that he has done so. As amended by act approved Sept. 1, 1967. L.1967, p. 3569.

**270. § 7. (Appearance of defendants.)** In any action to review any final decision of any administrative agency, the agency shall appear by filing an answer consisting of a record of the proceedings had before it, or a written motion in the cause or a written appearance. All other defendants desiring to appear shall appear by filing a written appearance. Every appearance shall be filed within such time as shall be fixed by rule of the Supreme Court, and shall state with particularity an address where service of notices or papers may be made upon the defendant so appearing, or his attorney.

**271. § 8. (Defendants.)** In any action to review any final decision of an administrative agency, the administrative agency and all persons, other than the plaintiff, who were parties of record to the proceedings before the administrative agency shall be made defendants.

**272. § 9. (Pleadings and record on review.)**

**(a) (Complaint.)** The complaint shall contain a statement of the decision or part thereof sought to be reviewed. It shall specify whether the transcript of evidence, if any, or what portion thereof, shall be filed by the agency as part of the record. Upon motion of any defendant, or upon its own motion, the court may require of the plaintiff a specification of the errors relied upon for reversal.



**(b) (Answer.)** Except as herein otherwise provided, the administrative agency shall file an answer which shall consist of the original or a certified copy of the entire record of proceedings under review, including such evidence as may have been heard by it and the findings and decisions made by it. By order of court or by stipulation of all parties to the review, the record may be shortened by the elimination of any portion thereof. If the complaint specifies that none or only a part of the transcript of evidence shall be filed as part of the answer and if the administrative agency or any other defendant objects thereto, the court shall hear the parties upon this question and make a finding as to whether all, or if less than all, what parts of the transcript shall be included in the answer. No pleadings other than as herein enumerated shall be filed by any party unless required by the court.

**(c) (Record after remandment.)** If the cause is remanded to the Administrative Agency and a review shall thereafter be sought of the administrative decision, the original and supplemental record, or so much thereof as shall be determined by court order or the stipulation of all the parties, shall constitute the record on review.

**273. § 10. (Costs of preparing and certifying record of proceedings before agency.)** If the statute under authority of which the administrative decision was entered provides or requires that the plaintiff in the review proceeding shall pay to the agency the costs of preparing and certifying the record of proceedings before the agency, the failure to make such payment shall relieve the agency of the necessity of filing the answer required in Section 9[1] and shall be authority for the entry of an order by the court, on motion therefor by the agency or any other defendant, dismissing the complaint and (in the case of an administra-

[1] Section 272 of this chapter.

tive decision which requires the payment of money) entering a judgment against the plaintiff and in favor of the administrative agency for the amount shown by the administrative decision that is involved to be due, and for costs. As amended by act approved July 8, 1959. L.1959, p. 648.

**274. § 11. (Scope of review.)** Every action to review any final administrative decision shall be heard and determined by the court with all convenient speed. The hearing and determination shall extend to all questions of law and of fact presented by the entire record before the court. No new or additional evidence in support of or in opposition to any finding, order, determination or decision of the administrative agency shall be heard by the court. The findings and conclusions of the administrative agency on questions of fact shall be held to be prima facie true and correct.

**275. § 12. (Powers of trial court.)** (1) The Circuit Court shall have power:

(a) With or without requiring bond (except if otherwise provided in the particular statute under authority of which the administrative decision was entered), and before or after answer filed, upon notice to the agency and good cause shown, to stay the decision of the administrative agency in whole or in part pending the final disposition of the case;

(b) to make any order that it deems proper for the amendment, completion or filing of the record of proceedings of the administrative agency;

(c) to allow substitution of parties by reason of marriage, death, bankruptcy, assignment or other cause;

(d) to dismiss parties or to realign parties plaintiffs and defendants;



(e) to affirm or reverse the decision in whole or in part;

(f) where a hearing has been held by the agency, to reverse and remand the decision in whole or in part, and, in such case, to state the questions requiring further hearing or proceedings and to give such other instructions as may be proper;

(g) where a hearing has been held by the agency, to remand for the purpose of taking additional evidence when from the state of the record of the administrative agency or otherwise it shall appear that such action is just. However, no remandment shall be made on the ground of newly discovered evidence unless it appears to the satisfaction of the court that such evidence has in fact been discovered subsequent to the termination of the proceedings before the administrative agency and that it could not by the exercise of reasonable diligence have been obtained at such proceedings; and that such evidence is material to the issues and is not cumulative;

(h) in case of affirmance or partial affirmance of an administrative decision which requires the payment of money, to enter judgment for the amount justified by the record and for costs, upon which execution may issue as in other cases;

(i) when the particular statute under authority of which the administrative decision was entered requires the plaintiff to file a satisfactory bond and provides for the dismissal of the suit for the plaintiff's failure to comply with this requirement unless the court is authorized by said particular statute to enter, and does enter, an order imposing a lien upon the plaintiff's property, to take such proofs and to enter such orders as may be appropriate to carry out said provisions of said particular statute; provided, however, that the court shall not approve said bond, nor enter an

order for said lien, in any amount which is less than that prescribed by the particular statute under authority of which the administrative decision was entered if said statute provides what the minimum amount of said bond or lien shall be or provides how said minimum amount shall be determined; and provided, further, that no such bond shall be approved by the court without notice to, and an opportunity to be heard thereon by, the administrative agency affected; and provided that said lien, created by the entry of a court order in lieu of a bond, shall not apply to property exempted from said lien by the particular statute under authority of which the administrative decision was entered. Said lien shall not be effective against real property whose title is registered under the provisions of "An Act concerning land titles," approved May 1, 1897, as amended,[1] until the provisions of Section 85 of said Act[2] are complied with.

(2) Technical errors in the proceedings before the administrative agency or its failure to observe the technical rules of evidence shall not constitute grounds for the reversal of the administrative decision unless it appears to the trial court that such error or failure materially affected the rights of any party and resulted in substantial injustice to him.

(3) On motion of either party, the trial court shall make findings of fact or state the propositions of law upon which its judgment is based. As amended by act approved Aug. 9, 1963. L.1963, p. 2687. Effective Jan. 1, 1964.

276. § 13. **(Appellate review.)** Any final decision, order or judgment of the Circuit Court entered in an action to review a decision of an administrative agency may be re-

[1] Chapter 30, § 45 et seq.
[2] Chapter 30, § 122.



viewed by the Appellate Court and Supreme Court in accordance with Sections 4 and 6 of Article VI of the Constitution of the State of Illinois.

Amended by P.A. 78-7111, § 1, eff. Oct. 1, 1973.

277. § 14. **(Civil Practice Act to apply to proceedings.)** The provisions of the Civil Practice Act,[1] including the provisions for appeal, and all existing and future amendments of said Act and modifications thereof, and the rules now or hereafter adopted pursuant to said Act, shall apply to all proceedings hereunder, except as otherwise provided in this Act.[2]

278. § 15. **(Short title.)** This Act[1] shall be known as the "Administrative Review Act", and may hereafter be referred to by that designation.

279. § 16. **(Effective date.)** The provisions of this Act[1] shall apply only to judicial review proceedings instituted after January 1, 1946. Proceedings for judicial review instituted on or prior to December 31, 1945, shall be governed by the law applicable thereto at such time.

[1] Section 1 et seq. of this chapter.
[2] Sections 264—279 of this chapter.

## CERTIFICATE OF SERVICE

I, Harvey H. Acton, a member of the Bar of the Supreme Court of the United States, do hereby certify that a copy of the foregoing Jurisdictional Statement has been served on counsel for the Appellees by personally delivering the same on the _____ day of August, 1975, to

Charles R. Young, Esquire
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and

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